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Canada Human Rights and Fundamental Freedoms
Special Committee on, 1950

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THE SENATE OF CANADA



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PROCEEDINGS

of the

SPECIAL COMMITTEE

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

No. 1

TUESDAY, APRIL 25, 1950

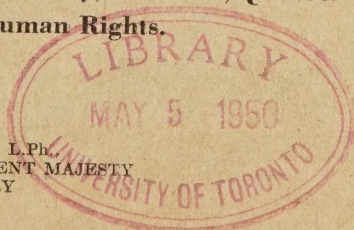
CHAIRMAN

The Honourable Arthur W. Roebuck

WITNESSES:

Professor F. R. Scott, Faculty of Law, McGill University, Montreal, Quebec.
Mr. King Gordon, United Nations Division of Human Rights.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for 20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Every one has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. Moyer,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, 25th April, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 A.M.

Present: The Honourable Senators Roebuck, Chairman; Baird, David, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, and Turgeon,—12.

The official reporters of the Senate were in attendance.

Professor F. R. Scott, of the Faculty of Law, McGill University, Montreal, Quebec, Messrs. King Gordon and K. Das, of the United Nations Division of Human Rights, and Mr. A. J. Pick of the Department of External Affairs, Ottawa, were present.

Mr. King Gordon read to the Committee a brief entitled "The United Nations and Human Rights" and was subsequently questioned thereon.

Professor Scott read to the Committee a brief on human rights and fundamental freedoms, and was questioned by Members of the Committee.

At one P.M. the Committee adjourned until Wednesday, April 26, 1950, at 10.30 a.m.

JAMES H. JOHNSTONE,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, TUESDAY, April 25, 1950.

The special committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. ROEBUCK in the Chair.

The CHAIRMAN: Gentlemen, other than our organization meeting this is the first assembly of the Committee on Human Rights and Fundamental Freedoms. When we met for organization purposes I expressed the opinion, evidently very prematurely, without the necessary knowledge and thought, that we could probably wind up these meetings in four sessions, and we set dates for four sessions. Well, in the interval my office has been a correspondance factory, and I have found interest in the work that we are doing expressed from Halifax to Vancouver. The four meetings filled up in a very short time, not with private individuals but with representatives of great organizations. As chairman, I took the liberty to make arrangements for two more meetings, on the 2nd and 3rd of May, and I hope that you gentlemen of the committee will approve of my action in that. Those meetings filled up and I then found it necessary to make precautions by engaging the room and the staff for two more meetings, for the 9th and 10th of May. It may be that we can conclude our hearings at that time, but it may be that we shall not, when a larger proportion of our public becomes aware that this committee is sitting, for evidently the interest taken in it is very deep and by thousands of people all over Canada.

We have a very fine program prepared for this morning. The United Nations have honoured us by sending us representatives of their Division of Human Rights. Mr. John Humphrey, Director of that division, who has been unable to come here himself, has written me a letter, from which I should like to read one paragraph into the record:

May I repeat that I regret very much that it will not be possible for me to appear before the committee. As a Canadian it would have been a unique privilege for me to give evidence before the Senate Committee on a matter in which I have an intense interest not only as an individual but as Director of the United Nations Division of Human Rights.

But Mr. Humphrey assured me that while he could not come himself he would send a delegate of the Human Rights Division, who he said would be well briefed, and in consequence we have with us today Mr. King Gordon, of that Division of the United Nations, together with Mr. K. Das, who has been with that Division of the United Nations for quite a number of years and has made a most intensive study of the constitution of states, the provisions that you will find in the resolution, and so on.

We are also honoured and favoured this morning with the presence of Professor F. R. Scott, of the Law Faculty of McGill University. As an eminent lawyer and teacher he has made an intensive study of this particular problem, and besides has published—I should restrain myself, perhaps, from using the superlative, but I was going to say the best document that I have

seen on the subject in Canada. However, I will say that it is one of the best things that I have ever read in connection with human rights, and it contains a vast field of information.

Now, if you agree, gentlemen, I will call Mr. Gordon. Naturally, we shall open up with a statement from the United Nations, because the resolution that brought the committee into being plagiarized the declaration of the United Nations, in the drawing of which both these representatives from the United Nations had a large hand. Before Mr. Gordon begins, I should also point out that Mr. Pick, of our own Department of External Affairs, is present to do the courtesies, so far as Mr. Gordon and Mr. Das are concerned, and to express the interest of that department in the work of the United Nations.

Mr. KING GORDON: Mr. Chairman and gentlemen of this distinguished committee, before I begin my statement I wish to extend the regrets of Mr. John P. Humphrey, Director of the United Nations Division of Human Rights, who was invited by the Special Committee to appear before them. Mr. Humphrey, unfortunately, had to leave last Saturday to attend a Conference of the Sub-Commission on Freedom of Information which was being held in Montevideo, Uruguay. To Mr. Humphrey's regrets I would add my own that the Committee is deprived of the pleasure of hearing one who has played so active and important a part in the planning and operation of the United Nations Human Rights program.

I am before you in the place of my Director and I am honoured to have this opportunity of appearing before an important Committee of the Canadian Senate. As an officer of the United Nations, I am at your disposal to provide to the best of my ability what information you may require from me on the work of the United Nations in the field of human rights. It is perhaps not necessary to remind you that while, as a Canadian I am particularly happy to be asked to give testimony before a Senate committee, I am here not primarily as a Canadian but as an international official. My testimony, I know, will be considered in that light.

1. Human Rights and the Charter

Just five years ago to-day, the representatives of forty-nine nations met together in San Francisco to found the organization now known as the United Nations. The war was still going on in Europe and in the Pacific. The toll of war was in everybody's mind, although the full cost was not to be known for many months. And in the minds of all delegates was the determination not only that the organization they were founding must save succeeding generations from the scourge of war but that it must devise the means to assist the peoples of the world to greater freedom, greater security, greater well-being. Victory was assured and the military threat of Nazism and Fascism had been practically destroyed. But the positive aims of the peace had still to be clearly formulated and realized.

One of these important aims had to do with the promotion of human rights and fundamental freedoms. Now this aim originated in the deep aspirations of people everywhere who had lived in or had been influenced by the on-going tradition of political and social democracy. But it sprang up with new fervor in response to the gross violations of human rights practised by Nazis and Fascists. The war on the Allied side was a struggle against a power and a philosophy that sanctioned and even encouraged wrongs to the individual, it was a struggle for the re-establishment and the promotion of a decent way of life. This urgent concern over human rights, rooted in the deepest instincts of peoples everywhere, was reflected in the war pronouncements of the Allied leaders, in the Atlantic Charter, in the Four Freedoms message of President Roosevelt, in other great declarations of war aims.

Curiously enough, in the early draft of the United Nations Charter drawn up at the Dumbarton Oaks Conference, the reference to human rights and funda-

mental freedoms was underplayed. The Dumbarton Oaks proposals which came before the San Francisco Conference had but one mention of human rights. And this defect had to be remedied.

The San Francisco Conference was much more than a conference of statesmen, of representatives of governments. It was a conference at which the will of peoples found expression. High officials of states still at war were very close to their peoples, were very much aware of the hopes and sufferings and aspirations of their peoples. Unofficial, non-governmental organizations, present at San Francisco, carried the wishes of millions of ordinary people into the very committee rooms where the character of the new world organization was being determined. Certain Latin American delegations wished to have a Declaration of Rights attached to the Charter. These were some of the factors accounting for the strong emphasis given to human rights in the United Nations Charter as it finally emerged. The United Nations program of human rights therefore, does not belong in the dream-world of *avant garde* visionaries: it was the response at the official intergovernmental level to the insistent demands of the peoples of the world. It reflected the mature appreciation of the kind of world called for by the sacrifices of war. It was the Right Honourable W. L. Mackenzie King, then Prime Minister and head of the Canadian delegation who said at San Francisco: "It is ours to help to bring into being a world community in which social security and human welfare will become part of the inheritance of mankind."

Through the Charter of the United Nations the human-rights motif runs like a red thread. Reference to basic rights and fundamental freedoms are made in no less than seven articles. The Preamble notes the determination of the peoples of the United Nations "to reaffirm faith in fundamental human rights, in the equal dignity and worth of the human person, in the equal rights of men and women of nations large and small". In Article 1 the Charter defines as one of the purposes of the United Nations "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Other Articles cite the promotion of human rights as among the functions of the General Assembly, the Economic and Social Council, and the Trusteeship Council. A Human Rights Commission is the only Commission specifically mentioned in the Charter. And in two Articles, Articles 55 and 56, the member States signatories of the Charter pledge themselves "to take joint and separate action in co-operation with the organization" for the achievement of certain purposes, one of which is "to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

At San Francisco, then, the Charter of the United Nations underlined the promotion of human rights as one of the important concerns of the newly-formed United Nations. It provided a mandate for the human-rights program which subsequently took form. And as signatories to the Charter, the member nations pledged themselves to carry out that program through joint and separate action.

2. The Universal Declaration of Human Rights

I should like to move ahead in history about three and a half years, from that spring day in San Francisco in 1945 to a winter night in Paris in 1948. It was the 10th of December and in the big assembly hall in the Palais de Chaillot a roll-call vote was being taken on a document which had been prepared for United Nations approval. That document was the Universal Declaration of Human Rights. When the votes were tallied, it was found that of the 58 nations represented at the third General Assembly, 48 had voted their approval of the Declaration, none had voted against it, eight had abstained, two were

absent. The Universal Declaration of Human Rights had been adopted by the world's most important political organ without one single dissenting vote.

Hon. Mr. TURGEON: Did Russia join in?

Mr. KING GORDON: Russia abstained; Russia and the rest of the Slav group abstained.

Hon. Mr. DUPUIS: Including Poland?

Mr. KING GORDON: Including Poland. I think that is correct.

It was a remarkable achievement, remarkable when one studies the document, remarkable indeed when one traces its stormy history in the process of its creation. Three years of discussion, proposals and counter-proposals drafting committees, sub-committees, the Human Rights Commission, the Economic Council and finally the General Assembly itself. And in the Social Committee of that Paris Assembly, article-by-article, almost word-by-word the text was reviewed and revised in 85 long meetings. The document that emerged showed the influence of the differing cultures, the differing social and political philosophies of the nations that comprised the world organization. It reflected the bills of rights and articles covering human rights of the constitutions of many states.

Incidentally, I want to leave with the committee a basic document which played some part in the early stages of the discussion in the drafting of the universal declaration. This is the basic secretariat text of the declaration, documented with references to the national constitutions and bills of rights taken from a great many nations. That document I shall leave with you. It is a rather long document. It might be useful to you in later study. It reflected the personal contributions of distinguished international jurists, the constructive proposals of many non-governmental organizations. But above all, it reflected the painstaking work of the scores, if not hundreds of men and women who, working on committees and commissions, had come to the conclusion that the common standards of human rights which united the peoples of the world were more important than the differences in interpretation and expression that divided them. The Universal Declaration emerged as a notable achievement in the parliamentary process of hotly-contested debate, proposals and concessions, restatement and redefinition, and ultimate agreement. The spirit of compromise made the achievement possible, but the compromises were not compromises in substance or in principle but rather compromises of formula and phrase.

It is worthwhile pausing a moment to consider this great document. For we have to know what it is in order to appreciate what impact it is likely to have—in fact, already has had—on the history of our time. The Declaration in its very preamble enunciates certain great principles which provide the moral and practical basis for its thirty articles. "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world." This is the solid ground on which the whole Declaration stands. But then comes the reminder of acts committed in our own time. "Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind." And then a reaffirmation of the hopes of mankind that found expression in the United Nations itself: "The advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from want and fear has been proclaimed as the highest aspiration of the common people." Reference to the rule of law as a protection against tyranny, to the development of friendly relations among nations and then the reminder that the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights and have pledged themselves to their promotion. At the close of the Preamble is the assertion that a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge. The Declaration is thus linked closely to the solemn commitments—those commitments expressed in Articles 55 and 56 of the Charter—undertaken by the nations who signed the Charter.

The Declaration clearly enunciates in its first 21 articles all the traditional personal rights or political liberties: the right to life, liberty and security of person; the right to equal treatment before the law; to fair trial; to freedom from arbitrary interference with one's privacy, family, home, correspondence; to freedom of movement; to a nationality; to marry and to found a family; to own property; to freedom of thought, conscience and religion; to freedom of opinion and expression; to peaceful assembly and association; to take part in the government of one's country directly or through chosen representatives; to periodic and genuine elections by universal and equal suffrage. All these traditional personal rights or political liberties are clearly set forth.

And the Declaration also defines the more recently recognized social and economic rights: the right to social security; the right to work; to free choice of employment; to just and favourable conditions of work and to protection against unemployment; to equal pay for equal work to just and fair remuneration; to form and join trade unions; to rest and leisure; to an adequate standard of living; to education; to participate in the cultural life of the community. It is a balanced, realistic, yet forward-looking statement of a philosophy of human conduct which reflects the needs and spirit of the twentieth century, not the needs and spirit of any one group or class or even any one nation but of all men and women everywhere, whatever their race, language or religion, their political opinion or their social origin.

In the preamble, the Universal Declaration is proclaimed as "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international to secure their universal and effective recognition and observance, both among the peoples of member States themselves and among the peoples of territories under their jurisdiction."

By teaching and education to promote respect for these rights and freedoms; by progressive measures, national and international, to secure their universal and effective recognition and observance—this is the two-fold imperative that flows from the action taken by 48 nations that December night in 1948.

Nor have the nations, collectively and individually been tardy in their response. The very night the Universal Declaration was adopted, the General Assembly passed a resolution which recommended that governments of member States use "every means within their power to publicize the text of the Declaration and cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

The CHAIRMAN: That is what we are doing today, Mr. Gordon.

Mr. GORDON: That is right.

The CHAIRMAN: If we are not doing anything else, we are doing that.

In the same resolution, the Secretary-General of the United Nations was requested "to have this Declaration widely disseminated and, to that end, to publish and distribute texts, not only in the official languages, but also, using every means at his disposal in all languages possible." The Specialized Agencies and non-governmental organizations were invited "to do their utmost to bring this Declaration to the attention of their members."

Efforts to implement this resolution began immediately and have continued without abatement up to the present time. Official texts of the Declaration have been prepared and disseminated in no less than thirty-three languages. Sixteen governments aided in the preparation of texts in languages other than the five official languages of the United Nations. Reports to the United Nations and UNESCO indicate that official government action with regard to the use of the Declaration in educational systems was taken in thirty-one countries.

UNESCO has been particularly active in encouraging the teaching of the principles of the Declaration in schools, educational, and community organizations. UNESCO's human rights exhibit at the time of the UNESCO Conference in Paris attracted wide interest. Through the combined effort of the United Nations and UNESCO, Human Rights Day was observed on December 10 in no less than 42 countries.

The Secretary-General, through the facilities of the Secretariat, discharged his obligation by the publication of pamphlets, the preparation and distribution of posters, films, film-strips, photo-features, and discussion guides, and through the broadcasting of special radio and television programs.

Thus, in many ways and through many channels, have the principles of the Declaration been brought into the lives and thoughts of peoples throughout the world. And it should be noted in passing, that great emphasis has been placed on the importance of bringing the news of the Declaration to the children and youth of the world for whom the rights and freedoms as set forth in the great document are something more than a dream or an ideal.

There is one question which is sometimes asked and to which a clear answer should be given. That question is: "What authority does the Universal Declaration possess?" And to that question I would unhesitatingly give the answer: "The moral and political authority of the Declaration cannot be over-estimated."

The moral authority of the Declaration springs from the very nature of the document, from the manner in which it was prepared, from the adherence which has already been given to it. It has moral and political force because it is an act of the world's most important political organ, because it is the synthesis of opinions and contributions of many thousands of people of different races, nationalities, religious and political opinions, because of the votes cast in its favour by 48 governments, because not a single vote was cast against it, because of the stature of some of its principal contributors—like Mrs. Roosevelt, who from the first has been Chairman of the Commission on Human Rights—because of the unofficial support it has received from churches, private organizations, and individuals all over the world, because of the character and authority of the principles enunciated in it.

Hon. Mr. DAVID: May I interrupt? You say here that, "because of the votes cast in favour of 48 governments." Were there any abstentions?

Mr. GORDON: Yes, sir. There were eight abstentions and two absentees at the time of the vote. There are the reasons for the moral and political authority of the Universal Declaration.

But we needn't stop here. For the authority of the Declaration has demonstrated in many actions at the international and national level. Along with the Charter of the United Nations, the Universal Declaration has been cited in a number of important United Nations resolutions.

Our Division, by the way, has prepared a synopsis of the important resolutions of the main organs of the United Nations in which the Charter and the Declaration, either of them or both, have been cited, and I shall be very pleased to leave that synopsis with the committee.

Let me name but a few. It was cited in a resolution passed at the third General Assembly which dealt with the treatment of people of Indian origin in the Union of South Africa. It was cited in a resolution passed by the same session that was concerned with the Soviet wives of citizens of other nationalities. In the fourth session of the General Assembly, the Declaration was cited in the famous Essentials of Peace resolution, in a resolution dealing with discriminations practised by certain states against immigrating labour, and in a resolution concerning educational advancement in trust territories. The Declaration was also mentioned in certain resolutions of the Economic and Social Council and the Trusteeship Council.

It may, perhaps, be worth pointing out that in a number of cases the Declaration appeared to be given equal authority with the Charter itself as a moral basis of United Nations decisions. In cases where violations of human rights were charged sometimes the Charter was cited alone—this was the general practice before the adoption of the Declaration; sometimes both Charter and Declaration were cited; sometimes the Declaration was cited alone.

There is another group of interesting cases which, perhaps with greater emphasis, underline the authority which the Declaration has achieved in just one year and four months since its adoption. In a number of new national constitutions and international statutes and agreements, the principles, and sometimes the very language and text of the Declaration, have been incorporated.

For example, there is an appendix attached to the Statute of the Netherlands-Indonesian Union, the new state in the formation of which the United Nations played a significant part. The appendix, consisting of 19 articles, enumerates the fundamental rights and freedoms recognized by the partners in the union. The articles correspond fairly closely to those of the Declaration: in some cases the language is identical.

Then there is the resolution of the Consultative Assembly of the Council of Europe which recommends the Committee of Ministers "to cause a draft convention to be drawn up as early as possible providing a collective guarantee, and designed to ensure the effective enjoyment by all persons residing within their territories of the rights and fundamental freedoms referred to in the Universal Declaration of Human Rights". The rights enumerated are for the most part drawn from the first twenty-one articles of the Declaration but the "Freedom to unite in Trade Unions" is derived from Article 23 of the Declaration.

In the Statute of Jerusalem, recently drafted by the Trusteeship Council, Article 9 sets forth many of the rights and freedoms proclaimed in the Universal Declaration. For the most part the rights and freedoms listed are taken from the first twenty-one Articles of the Declaration. But an omnibus paragraph is included which refers to the economic and social provisions mentioned in the latter part of the Declaration. This paragraph reads: "All persons, as members of society, have the right to social security and are entitled to the realization, through national efforts and international cooperation and, in accordance with the organization and resources of the City, of the economic, social and cultural rights indispensable for their dignity and the free development of their personalities." It is worthy of note that, "without prejudice to the preceding paragraphs" the Universal Declaration of Human Rights is to be accepted as a standard of achievement for the city.

In another action of the Trusteeship Council, human rights provisions were written into the Trust Agreement for the former Italian colony of Somaliland. The provisions reflect the basic principles and the scope of the Universal Declaration and Article 10 of the agreement specifically states:

"The Administering Authority accepts as a standard of achievement for the Territory the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948."

And now in this Committee of the Canadian Senate, it is surely of great significance to note in regard to the draft articles which are before you for your consideration that at least 16 of the proposed 18 have been taken directly from the text of the Universal Declaration.

All this is evidence of the moral and political weight of the Universal Declaration—its effect on decisions taken by the world's most important political body, its impact on the new statutes and constitutions that are being drawn up for nations, international territories, and regional associations, its impact on the thinking of men and women throughout the world, on the policy of agencies of information and on organizations that are engaged in the promotion of

human rights at the community level. When we consider the demonstrated moral and political authority of the Declaration, its actual influence on the history of our time, the question of its legal binding force becomes somewhat academic.

We now must consider the human rights program of the United Nations subsequent to the adoption of the Universal Declaration and, to a large extent, gaining impetus from the new commitments implicit in the Declaration. I should like to recall that the Preamble to the Declaration speaks of progressive national and international measures to secure the universal and effective recognition and observance of human rights.

At the second session of the Commission on Human Rights in the winter of 1947 it was decided that the International Bill of Rights which the Commission was instructed to draft should have three parts: a Universal Declaration, a Convention or Covenant of Human Rights, and Measures of Implementation. After the adoption of the Declaration, the Commission on Human Rights gave top priority to the drafting of an International Covenant of Rights and to the preparation of measures of implementation. The Covenant when adopted and ratified will take the form of an international treaty carrying precise legal obligations.

At the fifth session of the Human Rights Commission which took place last summer, the main topic under consideration was the draft of a Covenant and proposed measures of implementation. The draft which received tentative approval consisted of twenty-six articles. It is divided into three parts. Part I (Preamble and Articles 1 to 4) contains general introductory principles. Part II (Articles 5 to 22) is the substantive part of the document. Part III (Articles 23 to 26) deals with questions of signature, ratification, amendment and the coming into force of the Covenant. This draft was circulated among Member States for their comments. There were also circulated certain proposals for additional articles dealing with economic and social rights and certain other proposals on measures of implementation.

Comments have been received from twelve governments. Most of these are contained in working documents now before the sixth session of the Commission.

The CHAIRMAN: Was Canada included in the twelve Governments which gave comments?

Mr. GORDON: I do not think so. I do not believe Canada submitted any comments.

Mr. PICK: No, they did not.

The CHAIRMAN: There may be good reasons for it, but we are always anxious to know whether Canada is standing out in front in matters of this kind.

Mr. GORDON: There are three working documents, actually: One, on the replies to the articles on the covenant and the additional proposals; the second, on the matter of implementation; and the third, a special comment from the Government of Australia. These three are now before the Commission and are being used as the basis of their present discussion in bringing about a revision of the charter, and I shall leave the text of these documents with the committee. A study of these documents together with the amendments and additional proposals before the Commission, together with the text of the draft Covenant itself will indicate what kind of a document is developing. The Commission at its present sixth session has adopted some eleven articles in first reading. These articles cover such rights as fair trial; protection against torture, slavery, arbitrary arrest, imprisonment for debt; liberty of movement; recognition as a person; protection of alien residents against illegal expulsion; protection against criminal charges based on *ex post facto law*. It should be noted that even after the Commission has completed work on the Covenant in its present draft it will

have to decide whether it should be enlarged to include articles covering some of the social and economic rights as proposed by Australia and the Soviet Union. The decision of the last session was to confine the Covenant to the political and civil rights covered by the first 21 articles of the Declaration.

The CHAIRMAN: It is interesting to note that the Soviet Union has made suggestions on human rights. What were they?

Mr. GORDON: They have been very active, I think, both in the drafting of the declaration and in the drafting of the charter, in pressing for recognition of this group of rights which we roughly call social and economic rights—the right to social security, the right to work, protection against unemployment and ill health, and so on. This group of rights has been pressed quite strongly by the Soviet Union.

Hon. Mr. DAVID: But did the Soviet Union not protest against the right of the freedom of work?

Mr. GORDON: In which way, sir?

Hon. Mr. DAVID: The rights of trade unions were denied by them.

Mr. GORDON: I think, sir, that perhaps their interpretation of what is meant by the freedom of trade unions is different, as it is in a number of other cases, from the interpretation by the Western nations; but the Soviet Union have certainly held out for the rights of trade unions and against the violation of trade union rights.

Hon. Mr. DAVID: Did they not object also to the liberty of the workman to choose his own employment?

Mr. GORDON: I do not recall that they did, but I will ask Mr. Das if he has any recollection of that.

Mr. DAS: No, I cannot recall that they did.

Hon. Mr. DAVID: You know that in Russia workmen have not the right to work where they wish, but they must work where the state orders them to work.

Mr. GORDON: I do not recall that that question was raised in the Commission. However, the Commission has had a great many sessions and I have not attended all of them.

But there are also very important decisions to be reached on the question of implementation. The first of these is: Who has the right to appeal or petition against alleged infringements of human rights in violation of the Covenant? And the second question is: To what body shall appeals be brought?

The right of appeal or petition was given considerable attention by the fifth session of the Commission without any conclusive decisions being taken except for the recognition of the right of appeal of states. The question will be re-opened in the present session. And a choice will have to be made between three possibilities: (1) the right of appeal is open to individuals; (2) the right of appeal is open to non-governmental organizations, either all of them or a selected list; or (3) the right of appeal is open only to states.

As to the body primarily charged with implementation, here too there is wide difference of opinion. For example, the Commission has before it an Australian proposal for an International Court of Human Rights. There are also proposals for the establishment of *ad hoc* or permanent human rights committees to be selected from panels of experts. Certain states have been opposed to any machinery of implementation.

It will be seen that the work on the Covenant of Human Rights is still at an inconclusive stage. The working timetable calls for the completion of the draft Covenant and Measures of Implementation in time for consideration at the fifth session of the General Assembly in September. There is much work to be

done, but many are hopeful that the timetable can be held. When it reaches the Assembly the Covenant will receive the same careful scrutiny and perhaps revision as the Universal Declaration at the Paris Assembly. After adoption it will be open for signature and ratification. It is only fair, I think, to point out to members of this committee that it may be some time before the Covenant has received sufficient ratifications to bring it into force.

Hon. Mr. DAVID: Mr. Gordon, may I ask you about something that you referred to in the third last paragraph that you have read from your brief? There you refer to the right of appeal by states. What is that right of appeal? The human rights that we are discussing apply, evidently, to individuals. How would the state appeal in favour of one individual or a group of individuals?

Mr. GORDON: It would work in this particular way. Supposing violation of human rights were charged in a certain state. That could be brought before whatever body is set up to deal with it.

Hon. Mr. DAVID: Violation of human rights by a state?

Mr. GORDON: Yes, or by anybody, but it would have to be brought to the notice of the United Nations body by a state and not by an individual or an organization. The issue is, who has the right of appeal or of objection? Have only states that right, or have individuals or bodies? By a very close vote last time it was decided that only states have the right, but that is subject to further discussion.

Hon. Mr. DAVID: If a group of individuals claimed they were suffering because of non-recognition of their rights of freedoms, they naturally would appeal to their own state. But supposing the state rejected the claim, what would be the procedure for the individuals then?

Mr. GORDON: If the right of appeal were confined to states the individuals would have no right of appeal unless they could get some other state to present their case.

The CHAIRMAN: South Africa is a good illustration. On every possible occasion India complains that the rights of Indian nationals in South Africa are not being recognized by the South African Government. I suppose in that instance India could appeal to the United Nations on behalf of Indian nationals resident in South Africa.

Mr. GORDON: That is right.

Hon. Mr. DUPUIS: What power would the United Nations have to enforce any decision?

Mr. GORDON: That, sir, involves the second part of this question of implementation. That is, what kind of body will be established to hear appeals, and what power will that body have? A number of proposals have been made in that connection. Originally Australia proposed a rather elaborate charter for setting up an international court of human rights. Some thirty articles defined how this court would be constituted and what appeals it would hear and what action it could take. I understand that Australia has withdrawn that proposal and that a more modest proposal is being put forward by the United States with the backing of the United Kingdom. It would have an *ad hoc* committee of human rights drawn from a panel of experts which would be called into being when a case of violation arose, and this committee would take some action in the particular case. That is one of these matters still before this commission.

Hon. Mr. DUPUIS: But up to now no sanctions have been provided?

Mr. GORDON: No.

Hon. Mr. DAVID: So it would be a tribunal resembling the Hague, to which the states have the right to appeal when their state rights are violated. Supposing

the tribunal rendered a decision, how could it be imposed upon the state which was found to have been guilty of violation? Do you not think that a court without sanctions is worth nothing?

Mr. GORDON: I would not say it is worth nothing.

Mr. DAVID: Well, I will change that to say that it is worth very little.

Mr. GORDON: The powers of this particular body, whether it is to be a court or a committee, are not yet defined and are the subject of discussion.

Hon. Mr. DAVID: And we are only having a discussion here. There is another point I should like to mention. All these covenants on human rights have to be ratified by parliament, and I should like to know how this will be done. Will they be included in the constitution or will they be the subject of special laws? If they are the subject of special laws they may be changed at any time.

Mr. GORDON: I understand the Bill of Rights would have the same binding force as other international covenants or treaties. If I am not mistaken, it is a kind of treaty, but I say that subject to correction, for I am not an expert on international law.

Hon. Mr. DAVID: As I say, we are simply having a discussion here. Now, whatever the laws of states may be as to human rights and freedoms, do you not think that their value will depend upon the schools and the families of the various countries? If respect for the rights of others is not taught in the schools and families, no law will do much to advance human rights.

Mr. GORDON: Expressing my own personal opinion, I would say that I very largely agree with you, but I think that is true as to all law, whether national or international. I think you must have a very close interchange between the moral standards which permeate your community, the educational standards which prevail in your community, and the customary behaviour in the community and the law in the community. If there is a large lag between the moral beliefs of a community and the law of that community, the law will be evaded or annulled. On the other hand, the existence of law of this kind does tend to draw up the moral standards and intelligence of the community to new levels. So I should say that the law acts as a floor for community action and understanding and moral concepts, and also has a tendency to pull them up towards higher objectives. But I think there must never be too wide a gap between the law and public opinion, or the law will collapse.

Hon. Mr. DAVID: There have never been so many laws against crime in the world as there are today, and never before have there been so many crimes committed.

Mr. GORDON: I think the emphasis on the teaching of the declaration underlines just what you have been saying, sir.

Hon. Mr. DAVID: As a matter of fact, would you take this covenant of human rights as a form of education, if I may so put it, of the peoples of the world?

Mr. GORDON: I think that is one of the most important values.

Hon. Mr. DAVID: It is an educational document?

Mr. GORDON: I think the declaration is, but I think it is also having these educational effects which I have been speaking about, in influencing international decisions and being expressed in various constitutions.

5. United Nations Activity in Specific Fields of Human Rights

Meanwhile, the Universal Declaration continues to exert its extraordinary influence. And nowhere has this influence been more evident than in the work

of a number of committees, commissions and sub-commissions assigned to specific problems in the field of human rights.

Before I describe briefly some of this activity I would recall that even before the passage of the Universal Declaration two important Conventions had been adopted which were to have a significant bearing on the protection of human rights. The Convention on Genocide was adopted by the Paris Assembly and has been opened for ratification. The other Convention covering the International Transmission of News and the Right of Correction has been adopted but is not yet open for signature pending the final adoption of a Freedom of Information Convention.

An *Ad Hoc* Committee on Statelessness and Refugees, under the Chairmanship of Mr. Leslie Chance of Canada has prepared a draft convention for the protection of refugees and other stateless persons.

An *Ad Hoc* Committee on Slavery has just completed its preliminary work in planning a new assault against the remaining manifestations of slavery and similar practices.

The Economic and Social Council has given serious consideration to charges of forced labour and has inspired action by the International Labour Organization in creating a Fact-Finding and Conciliation Commission in the interest of protecting trade union rights.

A Sub-Commission for the Prevention of Discrimination and the Protection of Minorities has discussed new ways of combating discrimination and has prepared a draft article on discrimination for the Covenant. The Sub-Commission has also advanced in its task of defining the term "minorities" and the protection of their rights.

The Commission on the Status of Women has been active in pressing for the improved social, economic and political status of women throughout the world. During the last two years women have gained the franchise for example, in Belgium, Chile, Hungary, Syria and Indonesia.

The Sub-Commission on Freedom of Information and the Press, with a renewed mandate from the General Assembly and enlarged terms of reference continues its efforts to study methods of removing obstacles to the free flow of information and increase the availability of news to the peoples of the world.

I have tried to set forth in brief compass the human rights program of the United Nations, a program based firmly on the Charter, reinforced immeasurably by the Universal Declaration, issuing out into diversified endeavours to enlarge the actual range of human rights and freedoms. It is a program in which all Member Nations have played an important part and will we trust continue to do so.

It has always been realized that the promotion and the protection of human rights calls for close co-operation between national and international bodies. The action taken by international bodies strengthens the hands of those who in their own nations are anxious to promote human well-being and secure wider liberties. But it is also true, that action taken at the international level, whether it be through Declaration, or Convention, through pledge or resolution, becomes increasingly effective when it finds new expression in measures put into force by nations, or states, or local communities. I may say it is a source of great satisfaction to those of us in the permanent service of the United Nations to see this distinguished legislative body in Canada giving serious consideration to the question of human rights and fundamental freedoms, "what they are and how they may be protected and preserved, and what action if any, can or should be taken to assure such rights to all persons in Canada."

Hon. Mr. DAVID: Very good.

The CHAIRMAN: Splendid, sir.

Hon. Mr. DUPUIS: You said that there were forty-eight nations who signed the covenant.

Mr. GORDON: Who voted in favour of the declaration.

Hon. Mr. DUPUIS: Was Canada included in the forty-eight nations?

Mr. GORDON: Yes, indeed, sir.

Hon. Mr. DUPUIS: Who represented Canada then?

Mr. GORDON: Mr. Pearson, I believe, headed the delegation at that time.

The CHAIRMAN: Did not Mr. Ilsley have something to do with it?

Hon. Mr. DAVID: Yes.

Mr. GORDON: Not at that particular stage. If I recall, Mr. Ilsley was not at the Paris convention. This was adopted at the Paris assembly in 1948.

Hon. Mr. DUPUIS: Was there not any declaration at that time by the representatives of Canada that they had no jurisdiction to sign that?

Hon. Mr. DAVID: Yes.

Hon. Mr. DUPUIS: Because the jurisdiction over property and civil rights belongs to the provinces.

Mr. GORDON: There was an explanation of the voting. I am sure the representative of the Department of External Affairs has got information as to the nature of Canada's intervention. There was an abstention in the committee vote, and a later affirmative vote, when it came before plenary session, with an explanation, I think, of the federal character of Canada's constitution. Is that correct?

Mr. Alfred PICK: Quite correct. I have not brought any documents with me today because I was not expecting to testify. You probably receive our monthly bulletin of the Department of External Affairs. If you look at the issue for January, 1949, the immediate issue after the vote was taken in Paris, you will notice that, following the text of the universal declaration, is the text of a statement that Mr. Pearson made explaining that some aspects of human rights as set forth in the declaration were within the provincial field of jurisdiction.

Hon. Mr. DUPUIS: I do not mean that I am here to defend the provinces, but we have the British North America Act, and so long as there is this clause in it, that property and civil rights belong to the provinces, their jurisdiction must be recognized.

The CHAIRMAN: Well, Senator, I think Mr. Scott will attack that phase of the matter.

Hon. Mr. DUPUIS: I have read the interesting document of Mr. Scott.

The CHAIRMAN: And he is here. I have no doubt the representative of our External Affairs Department, when he appears on the 2nd or 3rd of May, will deal very fully with that, will you not?

Mr. PICK: Well, we are at your service. We certainly considered that was one aspect of the matter.

Hon. Mr. DAVID: But, taking the question of Senator Dupuis, I read the splendid article of Professor Scott—it is a beautiful article and it is worth being read and re-read—I do not know if it would not be possible, Mr. Chairman, when it comes to the matter of civil property, so that there will be no encroachment on the British North America Act and the rights of the provinces, that your article should be drafted in such a way that the autonomy of the provinces shall be acknowledged therein.

The CHAIRMAN: Oh, yes.

Hon. Mr. DAVID: I am satisfied that it would be easy to do that.

The CHAIRMAN: Let us leave it there, Senator, for a few minutes, until we hear Mr. Scott. That is his subject above all.

Hon. Mr. DAVID: I did not know he was here or I would not have made so many comments!

(The CHAIRMAN: I suppose that every senator here, if he were given the task of writing our report, would feel that that would be one of the first things that would jump into his mind, to deal with that problem. Now let us confine ourselves at the moment, if you will, to this United Nations document that we have here. Let us take not more than five or ten minutes more to elucidate that. If there are any questions now with regard either to what Canada did, or about this wonderful brief that we have just heard, let us have them.

Hon. Mr. DAVID: I understand that the attitude of Canada was first, in committee, to reserve its declaration, or its affirmative vote, and then, in general assembly, to vote in the affirmative. Is that right?

Mr. GORDON: That is correct, sir.

Hon. Mr. DAVID: Without any restrictions?

Mr. GORDON: Yes.

Hon. Mr. DAVID: Without any restrictions?

Mr. GORDON: Well, you have to realize that it is a declaration which, as you read in the preamble, sets a standard of achievement. The binding part of that preamble is of a general character. It binds states to work, through national and international action, to promote human rights, so I think perhaps you have to distinguish between the treaty character of that covenant and the standards of achievement as set in the declaration, even though the declaration, as it turned out, developed enormous moral and political authority. But there is a difference between taking a stand on the covenant or convention which is in the form of a treaty, and voting affirmatively for the declaration.

Hon. Mr. DAVID: Is it not possible also that in such a case I, for instance, would vote in favour of the covenant as presented as applying to the world at large, reserving to myself when I make my declaration of human rights and freedoms in my own constitution to make whatever restrictions my law imposes?

The CHAIRMAN: Canada did that very thing. Mr. Gordon, have you got any comments to make with regard to the resolution that forms the basis of this inquiry? You have got the resolution that we passed?

Mr. GORDON: Yes.

The CHAIRMAN: And are there any useful comments you can make on that resolution? That is really what we are here to study.

Mr. GORDON: Well, I do not think, Mr. Chairman, that as an international official I should be placed in a position of advising in a particular Canadian problem. I must say personally the resolution impressed me very much. It would naturally impress me because it is based so largely on the declaration, but I think that the working of it out within the Canadian context and within the Canadian constitutional frame-up is certainly the duty of this body and its Canadian advisers, and that it is not for an international official to advise in that respect.

Hon. Mr. DAVID: You can see that the chairman wanted to know what you thought of the drafting of the resolution. As he is the author he is very glad of your appreciation!

The CHAIRMAN: Oh, no; it was not altogether pride of authorship.

Hon. Mr. DUPUIS: Was there any Asiatic or African nation among those nations who sat down there to pass this universal declaration?

Mr. GORDON: Oh, yes, indeed.

Hon. Mr. DUPUIS: India? China?

Mr. GORDON: Yes. India, China, Burma, the Philippines.

Hon. Mr. DAVID: Arabia?

Mr. GORDON: Yes.

Mr. PICK: Saudi Arabia abstained.

Hon. Mr. DAVID: Spain?

Mr. PICK: Spain is not a member of the United Nations.

Hon. Mr. DAVID: Portugal?

Mr. GORDON: Portugal is not. There were forty-eight who voted affirmatively.

Hon. Mr. DAVID: Asiatic countries?

Mr. GORDON: Very many.

Hon. Mr. DAVID: And African states?

Mr. GORDON: Liberia voted.

Mr. PICK: Egypt, which is an African state. The number of African nations is limited. The Soviet bloc abstained, also Arabia and the Union of South Africa.

Hon. Mr. BAIRD: What effect will that have on the barbers of Toronto?

The CHAIRMAN: I would like to extend to you, Mr. Gordon, the thanks of this committee. I think I express the feeling of all of us in voicing our appreciation of you personally and of this marvellous brief that you have given us, and our gratitude to your organization, the Human Rights Committee of the United Nations, in sending you and Mr. Das here to give us the benefit of your experience and knowledge. It has been a useful visit; I hope it has been a pleasant one; and I can assure you that your brief will be read by many, many people. It will go into our printed records and be widely distributed.

Mr. GORDON: Thank you very much. It has been a great pleasure indeed for me to be here, and I assure you that if there is any further help we can give you in the way of documentation or anything, our Division is entirely at your service.

The CHAIRMAN: Mr. Das, have you anything that you would like to add to Mr. Gordon's statement?

Mr. DAS: No, I think not.

The CHAIRMAN: Now, then, Mr. Scott. Professor Scott, of McGill University, Law Faculty. We have already given you a welcome, Mr. Scott. I am repeating it, however. We are looking forward to your statement and such questionings as may follow it.

Professor F. R. SCOTT: Thank you, sir.
Honourable Senators,

May I first express my appreciation of the opportunity you have given me of appearing before this Committee, and of presenting certain views on the constitutional problems involved in the protection of human rights and fundamental freedoms in Canada. No subject, in my opinion is more worthy the attention of the legislatures of democratic states today than the one referred to your consideration, for it is by enlarging human rights and fundamental freedoms that we strengthen the moral basis of our social order, and give to all our people a stake in democracy which is the surest defence against anti-democratic creeds. Moreover Canada, as a signatory of the International Declaration of Human Rights and as a member of the United Nations has pledged herself, in the words of the Charter, "to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms". If we have given this pledge, we should take steps to carry it out by positive action, and so far little has been done by parliament except to receive a report submitted by the Joint Committee that met during the Sessions of 1947 and 1947-48. The existence of this present Committee will give encouragement to those many individuals and organizations

who are actively working to enlarge our great heritage of personal liberty and to strengthen the foundations of our human rights.

It is not my purpose in this submission to discuss the wording of any particular draft Bill of Rights, or to suggest the phraseology that would best meet our particular situation. Rather do I intend to examine some of the constitutional problems that must be faced when deciding what action might be taken to promote respect for fundamental freedoms and human rights in a federal state with our kind of constitution. And may I say at once that I do not share the view of some that this subject belongs primarily to the provinces, and therefore is not properly discussed by the federal parliament and government. It would indeed be strange if this were so: if the only legislature that can speak for all Canadians, and the only one that represents them in the international arena where human rights are now a matter of joint concern to the whole family of nations, should find itself helpless to safeguard the great principles of freedom and individual rights on which our constitution is founded. Such a proposition need only be stated to have its absurdity revealed. There are proper areas for provincial action in defence of freedom, as there are proper areas for municipal action, for wherever there is government there is the challenge and need of democracy. By the same token there is a proper area of federal action, an area in my view vaster in extent and more crucial for our ultimate safety than that of all other Canadian governments put together. But I have expressed my views on this point elsewhere, in a published study that some members of this Committee may have seen, and I need not at this stage go over the ground that is there covered. Suffice it to say that Canadians are not just citizens of ten different provinces; they are also citizens of one single country, and as such they have many human rights which it is the duty of this parliament to preserve.

Hon. Mr. DAVID: Professor Scott, you may find my interruptions a little annoying, but you state here that, "suffice it to say that Canadians are not just citizens of ten different provinces." Does citizenship as we understand it in the international way apply to a part of a country or just to the country itself as a whole?

Professor SCOTT: I think the answer, sir, is that it applies to the country itself as a whole.

Hon. Mr. DAVID: Then does the term "citizens of the provinces" apply?

Professor SCOTT: Perhaps I used the phrase loosely, but every person who lives in a province has certain rights in relation to the provincial government of that province, and he therefore possesses rights which are comparable to citizenship rights. The word citizenship is used more in the United States in relation to the citizenship possessed in the various states of that Union. I am thinking of the right to vote and to hold public office in a province. Strictly speaking, however, citizenship belongs to the entire country only and not to any one province.

Hon. Mr. KINLEY: In other words, there is no citizen of a province but rather a citizen of a country?

Professor SCOTT: Of a country, but as a resident in a province you have particular rights under that particular provincial government.

Hon. Mr. KINLEY: It is a matter of domicile.

Hon. Mr. DAVID: Do you not think, Professor, that the expression "citizen of a province" or "citizen of a state" comes from the old Roman Empire? They were not citizens of a country; they were citizens of Rome, and Rome was a whole country.

The CHAIRMAN: Irrespective of where they resided.

Hon. Mr. DAVID: Yes.

Professor SCOTT: Roman citizenship was extended finally to all residents of the Empire, but it was not originally so.

Now let me turn to some important distinctions that must be borne in mind in considering what action may be recommended at this time. First of all, it is clear that the expression "Bill of Rights" can be used to describe various kinds of documents. Since the provinces have a certain jurisdiction in this field, we can contemplate a Bill of Rights being enacted by special statute in each provincial legislature. Most of the American States have Bills of Rights in their constitutions. The province of Saskatchewan has already taken this step (1947 Statutes, Chap. 35). Alberta attempted it, but so linked the legislation with extraneous matters that it was held unconstitutional by the courts. It would be encouraging were more provinces to take their stand for fundamental freedoms, perhaps co-operating to agree upon a model Bill of Rights which would provide uniform standards across Canada. This is a matter which the existing Conference of Commissioners on the Uniformity of Legislation might care to take under advisement. Provincial matters are outside the jurisdiction of this Parliament, however, so I will say nothing further on Provincial Bills of Rights at this time.

Just as a province can enact a Bill of Rights, so too can the Dominion parliament. A Federal Bill of Rights Act would apply in respect of all matters over which the parliament of Canada has jurisdiction. I have already indicated that these cover a wide area. As far as the North West Territories are concerned, this parliament is the sole legislative authority.

Obviously there is no restriction whatsoever in regard to that territory.

Hon. Mr. DUPUIS: I suppose the authority would apply to the Eskimos?

Professor SCOTT: And the new workers going into Yellowknife and the Yukon and the north generally.

The CHAIRMAN: It is a pretty wide territory, is it not?

Professor SCOTT: It is a very wide territory both jurisdictionally and geographically.

The enactment of the Act would not of course increase federal jurisdiction. If the Act went beyond the sphere allotted to Parliament under the B.N.A. Act the courts would be obliged to hold it unconstitutional, but this is true of every federal statute. If the only concern is over the question of jurisdiction, there seems no more reason to hesitate to legislate in regard to fundamental freedoms than with regard to a host of other matters on which federal legislation already exists. The Bill of Rights would have to be drawn with care; it would have to specify that it applied only with respect to matters under federal jurisdiction; it could not expect to be free from some limitations. But that it would be possible to draft it in a form expressive of many great principles I have no doubt. I have said before, and I repeat here, that there is not one article in the International Declaration of Human Rights that is wholly and exclusively within provincial jurisdiction; though it is to a large degree true also to say that there are very few articles which do not give rise to some provincial responsibilities also.

Hon. Mr. DAVID: Excuse me, Professor Scott, but I believe there is an article—I think it is article 91—which provides the federal government with the right to legislate in all matters pertaining to the welfare of Canada—to the welfare.

The CHAIRMAN: Peace, order and good government.

Hon. Mr. DAVID: And welfare.

Professor SCOTT: I am afraid the word welfare was in the Quebec resolutions but was taken out and changed to "order" in the preamble of section 91.

The CHAIRMAN: It preserves eleemosynary institutions.

Hon. Mr. DAVID: You will remember, Mr. Chairman, that I have not looked at article 91 for some time. The matter was discussed in the Senate two years ago by Senator Farris when speaking on the law proposed by the House of

Commons. He discussed the law and had very serious doubts about it, but came to the conclusion that perhaps the law would be constitutional falling under the expression "welfare" to be found in Article 91.

Professor SCOTT: Welfare is not in 91.

The CHAIRMAN: Eleemosynary institutions are reserved to the province, and from that flows the idea that welfare subjects in general are the property of the province.

There would seem to be at least four valuable results that might be expected to flow from a federal Bill of Rights enacted by simple statute of Parliament. In the first place, its adoption would give leadership where leadership is very important. It would be a solemn affirmation by the most important legislature in Canada of our faith in and concern for the great principles of freedom, and since in promoting human rights the positive declaration counts for much, it would strengthen the forces in the country and in the world that are defending these freedoms. In the second place, its principles would become a recognized part of public policy, and thus would assist judges in the interpretation of both statutes and private contracts. It is a well known principle of law that private agreements cannot violate public policy. In the third place, its sacrosanct character would influence the course of future legislation in parliament by inhibiting the adoption of later statutes in conflict with it; though since parliament cannot bind its successors there would be no absolute barrier to subsequent amendments. The English Bill of Rights of 1688 has been of lasting value even though it could be repealed tomorrow by mere majority vote in the parliament of Westminster. Lastly, and perhaps most importantly, a federal Bill of Rights would effectively bind the executive and administrative branches of government, making them subject to the will of parliament as thus expressed. Let me give a specific example of what I mean. Under the War Measures Act the Governor-General-in-Council has power to order the deportation of Canadian citizens by order-in-council; this was held in the Japanese-Canadians case. If the prohibition of deportation of citizens were written in to the Bill of Rights, no such order-in-council could issue unless a subsequent statute specifically gave the power to the executive—which is most unlikely to happen. Though parliament cannot bind its successors, it can certainly bind public officials.

Hon. Mr. DUPUIS: The general clause in the B.N.A. Act states that the federal government has the right to legislate for peace, order and good government, and this would supersede all the clauses you have been talking about, in time of war and emergency. The clause of peace, order and good government supersedes all other clauses. Do you maintain that this Bill of Rights included in the British North America Act would over-ride the general clause, peace, order and good government, in time of emergency? That is what you say, if I understand you right.

Professor SCOTT: No, not quite that. I am not now talking of the amendment to the Constitution but I am talking merely of a Dominion Statute; I am coming to the amendment to the Constitution in my next paragraph. I say there would be some value in my view in a federal Bill of Rights Act by ordinary Statute of Parliament, although I admit it could not bind future parliaments, and future parliaments could therefore repeal it in emergencies if they wished. In respect to the War Measures Act, however, it would take out powers now in there. The Japanese-Canadian case indicated that there is perhaps more power vested in the Governor-General-in-Council through the War Measures Act than is really necessary for the prosecution of a war, because I doubt whether the exiling of citizens is really necessary in terms of war power, and we might have to consider whether the War Measures Act might have to be more carefully drawn in the light of our experience and our need for the protection of human rights. For instance, there is a protection in the War

Measures Act for the right of compensation if property is to be expropriated for war purposes. Thus there is a little protection of the right of property in the War Measures Act, which does not interfere with the efficient prosecution of a war. Similarly, one can take away from the Governor-General-in-Council the power he has now of exiling Canadian citizens by order-in-council.

Despite these advantages in a federal Bill of Rights, I do not personally consider that it would be as valuable a protection for human rights and fundamental freedoms as a Bill of Rights written into the constitution itself, by an amendment to the B.N.A. Act. This is where a Bill of Rights belongs, in the fundamental law of the land. The superior advantages of this method of protection seem obvious. There is first of all no problem of Dominion-Provincial jurisdiction to consider; it is just as easy to enumerate rights under provincial as rights under federal authority, since ultimately the constitution must be amended to give the Bill the force of law. All that need be decided is which rights we wish to safeguard. In selecting these, we have the great advantage of the International Declaration of Human Rights to guide us, as well as the very helpful draft which was included in the terms of reference of this Committee, and others that are available. The purpose of placing rights and freedoms in the constitution itself is to secure ourselves, not only from executive and administrative action that would violate them, but from the possible tyranny of legislative majorities as well. It is only too easy in Canada, particularly on the provincial plane, for some sudden movement of opinion to place a government in power which is not fond of democratic procedures, and which can adopt legislation that pays scant attention to human rights or fundamental freedoms. Such legislation can now be upset by the courts only if it is ultra vires the legislative powers as distributed by Sections 91 and 92 of the B.N.A. Act; with a Bill of Rights in the constitution the legislation would have to pass an additional test. Thus our independent judiciary would become the guardians of our liberties to a greater extent than they can possibly be now.

The CHAIRMAN: As they are in the United States.

Professor SCOTT: As they are in the United States and as they are, I understand, in almost every federally constituted country in the world with the exception of our own and Australia.

Hon. Mr. DAVID: You say, "It is only too easy in Canada, particularly on the provincial plane, for some sudden movement of opinion to place a government in power which is not fond of democratic procedures, and which can adopt legislation that pays scant attention to human rights or fundamental freedoms." You are not making any allusion to any province in particular?

Professor SCOTT: Not at all, sir.

Hon. Mr. DAVID: Either in the East or the West?

Professor SCOTT: Not at all, sir.

Hon. Mr. DUPUIS: You have in mind, perhaps, what kind of government would take away human rights and fundamental freedoms if they ever got into power in the provinces?

Professor SCOTT: We have already had some fundamental freedoms reduced, and not only in the provinces, I might suggest, senator.

I would point out that in adding a Bill of Rights to our constitution we would not be in any way changing the fundamental nature of the constitution. We already have a number of such fundamental rights in the B.N.A. Act. There is the guarantee of the use of the two official languages in Section 133; the right to separate schools in Section 93; the right to an annual session of Parliament in Section 20; the right to an independent judiciary in Section 99; and the right to a general election at least every five years in Section 50, though since the enactment of the British North America (No. 2) Act, 1949, this latter right can be abrogated in time of emergency by a vote of $\frac{2}{3}$ of the members of the House

of Commons. Adding further rights to this list merely increases the number of limitations upon the sovereignty of our legislatures, but does not introduce the principle of limitation. A constitution that now protects minority rights might well go on to protect individual rights. What happened at Confederation was that the traditional freedoms, being generally accepted, were not defined by constitutional law, though the statement in the preamble to the B.N.A. Act, to the effect that our constitution was to be "similar in principle to that of Great Britain", implied all the privileges and practices of parliamentary government; while the minority rights were peculiar to Canadian history, not part of the British tradition, and so were carefully drafted and incorporated in the constitution. We have now reached a stage in the world's history where the traditional rights are under such attack from many quarters that their careful drafting and inclusion in the fundamental law would seem highly desirable for the same reasons that produced the earlier definition of minority rights. England has herself produced great declarations of rights at various times, from Magna Carta to the Statute of Westminster.

Hon. Mr. REID: Magna Carta did not protect the Scottish people after Culloden. The Scottish people lost the right to use their kilt, their bagpipe and their language, despite the existence of Magna Carta on the Statute books.

Hon. Mr. DUPUIS: That was the greatest Bill of Rights.

Hon. Mr. REID: A government can do anything, no matter what the law is.

Professor SCOTT: Magna Carta was intended to protect the people against the power of the king, not against the power of parliament.

Hon. Mr. REID: Despite Magna Carta great rights were taken away from the Scottish people and were not restored for many years.

Hon. Mr. DAVID: The Scotch may have lost their language, but I do not think they lost their fire.

Hon. Mr. KINLEY: And I do not think they lost their language.

Professor SCOTT: As I indicated in my opening remarks, I am confining myself, in this submission, to the constitutional questions that arise, and am not embarking upon an attempt to draft the Bill of Rights.

The CHAIRMAN: I wish you would.

Professor SCOTT: Upon this subject, however, I would like to say a word. I do not believe it is necessary or desirable to place the entire International Declaration of Human Rights in the constitution. It covers a great deal of ground. It includes not only the traditional freedoms, such as freedom of religion, of speech, of the press and of association, but also those more recently defined social and economic rights which, while extremely important to the safeguarding of individual freedom, cannot be protected by simple constitutional provisions, and require implementation through social legislation. Such rights as the right to work, to the enjoyment of the arts, and to rest and leisure, fall in this category. There may be some value in setting forth these rights as statements of social aspiration, as goals to spur us to greater effort, but they will depend upon changing political policy rather than constitutional law for their fulfilment. We are more likely to make progress on a Bill of Rights if we keep its provisions to a reasonable compass, including those matters on which there is very general agreement, than if we attempt to extend it to every form of right. A progressive democracy will be constantly discovering and protecting new rights and freedoms, and will from time to time incorporate those that are tried and tested in the fundamental law; but law can never be as forward looking as the imagination of mankind.

Hon. Mr. DAVID: Under our constitution the provinces have exclusive jurisdiction over property and federal rights. Now, article 14 of the proposed Bill of Rights might encroach on provincial autonomy. Would it not be possible

to have in this article a restriction guaranteeing the autonomy of the provinces as to property, while expressing the general principle that everyone has the right to own property?

Professor SCOTT: You are asking me now about a federal statute only? You are not talking about an amendment to the constitution, I take it.

Hon. Mr. DAVID: No.

Professor SCOTT: I cannot see any danger to provincial autonomy in a federal statute, whether it is called a Bill of Rights or a Railway Act. The federal government cannot take unto itself more jurisdiction than it is entitled to have, simply by passing a statute and calling it a Bill of Rights, for the courts will always hold the federal parliament within its proper jurisdiction, under a statute called a Bill of Rights as under a statute bearing any other name.

Hon. Mr. DUPUIS: The courts could not only delimit the powers of the respective legislative authorities, but could declare the whole statute *ultra vires*.

Professor SCOTT: They could do that, or they could distinguish between the parts that are *ultra vires* and those that are not, if they are severable.

Hon. Mr. DAVID: When it comes to provincial rights, in which the federal government, being the government of the whole country, has a general interest, is it not possible to provide that there will be no encroachment on the autonomy of the provinces in these matters? I do not know whether I am making myself clear.

Professor SCOTT: I think I follow you, and my opinion is that it would be quite possible to make it clear that the declaration is not an encroachment on provincial rights but merely expresses the opinion of the national parliament.

Hon. Mr. DAVID: You say that the courts will prevent parliament from going beyond its jurisdiction, but in my view the fewer appeals that are made to courts for the interpretation of statutes, the better.

Hon. Mr. KINLEY: What about the federal power of disallowance of provincial statutes? Senator David says the provinces have exclusive jurisdiction in property and civil rights, but that is not so, for there is a federal power of disallowance. The provinces certainly have not got absolute authority in property and civil rights.

Professor SCOTT: No. As a matter of fact, there is an element of property and civil rights in nearly every one of the items mentioned in section 91 of the British North America Act, which specifies the powers of parliament. For instance, there is an element of property and civil rights in bankruptcy, in interest and so on.

Hon. Mr. KINLEY: I recall that some acts regarding property passed by the legislature of Nova Scotia when I was a member of that body were disallowed at Ottawa. So disallowance is quite a factor, and so long as this power of disallowance exists the provinces cannot say they have absolute authority over property.

Professor SCOTT: I have always considered it to be the duty of the federal government to use its power of disallowance in defence of both minority rights and fundamental freedoms, if it should be considered that a province has gone too far in its legislation.

Hon. Mr. KINLEY: There is no limitation to that disallowance?

Hon. Mr. DAVID: No.

Hon. Mr. KINLEY: There is another point, as to concurrent legislation. That is, if the federal parliament and a provincial legislature pass a law on the same subject, the federal legislation prevails.

Hon. Mr. DUPUIS: It depends upon what subject the legislation deals with. The federal legislation would not prevail if it dealt with property and civil rights.

Hon. Mr. DAVID: Then it would be considered unconstitutional and not concurrent legislation; but in cases where parliament and the provinces have the right to legislate, the federal legislation would prevail.

Hon. Mr. REID: A great deal of stress has been laid upon the right of people to work, but has any thought been given to the right of people not to work? There is a certain trend now towards compelling people to work when they want to strike, and some authorities apparently think they can dictate to workmen and tell them that they must go to work, whether they like it or not. Not long ago the President of the United States was asked to request the miners not to stay off work, and to declare their strike illegal. I say that in a true democracy a man has a right to refuse to work, if he so chooses.

Hon. Mr. DAVID: I understand that in the case of the coal miners the President declared an emergency, and I think that in the case of an emergency the government would have the right to say that people could not strike.

Hon. Mr. REID: I am speaking of ordinary cases.

Professor SCOTT: The International Declaration of Human Rights prohibits forced labour. Now if you prohibit forced labour you are guaranteeing a right not to work if a person does not want to work. That takes care of it.

Hon. Mr. BAIRD: What state of affairs are we going to have if people are just to do as they think fit? These labour unions today turn around and say "We will picket this factory; we will do this, that and the other thing". Surely something must be done with regard to a situation of that kind.

The CHAIRMAN: There is an obvious distinction between an individual saying "I will not work" and the simultaneous ceasing of work by a large number of people in concert. I am not drawing any invidious comparisons as between the two, but there is a distinction between an offence at common law and a conspiracy to commit an offence.

Hon. Mr. REID: But speaking of freedoms, if you give an individual a right, it is a freedom. I have the right to say whether I will work or not.

Hon. Mr. DUPUIS: There is a difference between freedom and licence.

Professor SCOTT: The right to strike, Mr. Chairman, is just an extension of the right of each man not to work. The right to strike grows out of that, and that is why, I think, we protect the right to strike, except under certain circumstances.

Hon. Mr. BAIRD: But remember these silly dictators we have in our midst. I call them "silly dictators" because they are dictating to these poor devils, in many cases, they are telling them "You should do this" and "This is the way to do that". Lots of people don't go to work because they just are not allowed to.

The CHAIRMAN: We are in a difficult field, are we not?

Hon. Mr. DUPUIS: This piece of legislation is so broad in its implication that we could talk it over during centuries.

Professor SCOTT: Shall I proceed, then?

The CHAIRMAN: Yes, do, please, Professor.

Professor SCOTT: *The Drafting and Adoption of a Bill of Rights.*

The drafting of a Bill of Rights for inclusion in the B.N.A. Act is a task that should be entrusted to a special committee selected for this purpose. If I might venture the suggestion, I would urge this Committee of the Senate to consider recommending the appointment of such a special committee by the Minister of Justice. Its membership might include persons chosen from the Canadian Bar Association, from the Canadian Law Schools, and from other representative groups.

Knowing that this Committee of the Senate had only a few days to devote to the discussion of a bill, I do not think it would be possible to do the actual wording of that within this committee; and you will probably consider ways and means of having the job done if you decide to recommend that it should be done. Therefore I am not spending time in this committee discussing particular words, but I am suggesting here that the Department of Justice or some other body might be asked to set up a committee to recommend a draft which could then be considered.

When it had completed a draft bill the document could either be referred to the Dominion-Provincial Conference on the constitution for approval and adoption, to be enacted as law by the United Kingdom Parliament at the same time as the new techniques for amending the constitution are similarly enacted, or else, if this were thought undesirable, it could be put forward as the first amendment under the new techniques once they go into operation. It will be remembered that the American Bill of Rights was not part of the original constitution, but was subsequently adopted as the first ten amendments, all of which were enacted together. The simpler procedure for us would seem to be to refer the matter directly to the Dominion-Provincial Conference itself. I am aware that some exception is taken to this view, and that the Conference has a great deal of work on its hands. Nevertheless it has already agreed that certain sections of the constitution should be placed in a category requiring for its amendment the unanimous consent of Parliament and of all the provincial legislatures; in this category of entrenched clauses would also properly belong the fundamental freedoms and human rights. At any rate the decision as to whether the Conference should or should not consider a fundamental Bill of Rights might well be left to the Conference itself. I would point out that it has already added one new subject to its agenda, namely the question of the delegation of powers.

Other Measures for Protecting Human Rights

I would not wish to give the impression that I believe a Bill of Rights is the only useful measure that can be taken to protect and preserve our traditional rights and freedoms. Whether or not it is adopted, and under whatever form, other steps are both practicable and necessary. I should like to place some further suggestions upon the record. First in order of importance I would mention the Criminal Code. We are in the process of revising our Criminal Code for the first time since 1890. It is, in many respects, an old-fashioned Code. It has many gaps, notably some where violations of human rights occur. Not till 1939 did we make it a crime for an employer to dismiss a worker for trade union activity. It is still not a crime to discriminate against races in the letting of hotel rooms or the provision of meals in restaurants.

Hon. Mr. DAVID: Or for barbers.

Professor SCOTT: Or for barbers.

Yet such acts are an attack upon the dignity of the individual, and should be classed as criminal. It is also no crime as yet to discriminate against races and religions in the hiring of employees in either public or private employment.

Hon. Mr. DUPUIS: With your kind permission I would like to interrupt you and say that in some organizations of the Canadian Government, in the form for employment, they put the question "What religion?" I think it is high time for this Canadian Government to strike out that provision.

Professor SCOTT: I entirely agree with you.

The CHAIRMAN: What business of theirs is it what religion a man has?

Hon. Mr. DAVID: The point is well taken, sir.

Professor SCOTT: Might we not at this time revise our Criminal Code in the light of the International Declaration of Human Rights, to make sure that our

standards of public morality are as high as those proclaimed in the international code? This is clearly a matter within federal jurisdiction.

Again, one great difficulty in the protection of freedom is the provision of adequate remedies for acts violating them. It is almost easier to check the actions of legislatures than of individuals, through the power of direct reference of laws to the courts. For arbitrary arrest and detention of the individual we have the speedy and efficient remedy of habeas corpus.

The CHAIRMAN: When it is not set aside.

Professor SCOTT: When it is not set aside. In many other cases of violation the individual who has been discriminated against is left with nothing but an action in damages against some government official or private person. He is faced with all the difficulties of making proof, and risking a series of long and costly lawsuits. Nobody comes to his assistance, unless there be some well organized Civil Liberties Association with adequate funds, or he is a member of a trade union that will fight his battle. The theoretical remedy of recourse to the courts may be practically useless. Yet every time a violation of human rights goes unpunished, the liberty of all is endangered.

Hon. Mr. DUPUIS: Are you talking of the case of a man arrested and accused of some crime? Does not the Canadian Government supply an attorney for such accused persons?

Professor SCOTT: I am thinking of other matters, such as the denial of a right because of race or religion to occupy a job, or the denial of protection in the case of public meetings. I am talking generally. The individual is often left with what is theoretically an adequate remedy of that violation he has suffered, but practically it is very difficult for him.

Can we not devise some better machinery than we now possess? In the United States in 1939 there was created a Civil Rights Section in the federal Department of Justice, staffed by competent lawyers, whose sole duty it is to investigate violations of civil rights in order to see whether prosecution should be undertaken. Some such provision might be made for a similar section in the Department of Justice at Ottawa. I am sure the people of Canada would welcome the expenditure of the funds necessary for this purpose. Most of the administration of justice in Canada is in provincial hands, including the taking of prosecutions under the Criminal Code, but we might anticipate the fullest co-operation of provincial Attorneys-General in the enforcement of laws designed to protect fundamental freedoms, if violations were brought to their attention by the federal officers. Enforcement by federal officers is always possible in the last resort, as under the Combines Investigation Act. Some consideration might also be given to the establishment of an administrative agency charged with the enforcement of anti-discrimination laws, along the lines so successfully followed by the New York State Commission Against Discrimination. We have reached the stage where fundamental freedoms, in the words of President Truman, require not only protection of the people from government, but protection of the people by government.

Might I just add that the State of New York has a special governmental commission. Instead of using the police power through the criminal courts, it uses this administrative body which, in discovering cases of discrimination, will, in a very quiet way, without publicity, without immediately instituting a lawsuit, send its trained officers to talk to the employers or whoever it may be is practising discrimination to see if these people cannot be induced to change their practices. They approach the matter more like a social service agency dealing with some social problem. This new concept of how we may induce people to raise their standards of behaviour is, I think, showing good results in the United States. Any members of the committee who are interested will

find an excellent article in the Yale Law Review, 1947, discussing the experience of this administrative agency, covering now nearly five years, in the State of New York.

The CHAIRMAN: The Yale Law Review, 1947?

Professor SCOTT: It is Volume 56—I am speaking from memory—and it is called "The New York State Commission Against Discrimination". The law in the United States, that is in the State of New York and some other states, is far ahead of any equivalent law we have in Canada in terms of prohibiting discrimination.

Hon. Mr. DAVID: That law applies to the southern part of the United States?

Professor SCOTT: Very far from it.

Hon. Mr. DAVID: Professor Scott, would you agree with me that whatever may be the laws of the world or of any separate nation, they will be in direct proportion to the mentality of the individual; and that the mentality of the individual is formed in the home and in the school, and that therefore this absence of discrimination should be first taught in the family circle and secondly in the schools and universities?

Professor SCOTT: I would agree with you, senator, that ultimately the quality of a civilization is determined by the character of its individuals, but I would also say that the character of the individual is in large part determined by the nature of the system of law under which he lives. That is one of the factors of his environment, and while you cannot make a person good or bad by an act of parliament, you can undoubtedly create conditions by act of parliament which will render it more likely that he will be one kind of an individual rather than another. Therefore, while I agree with you that fundamentally we depend upon the spirit of man to make the fundamental freedoms real, law does play a very important part.

Hon. Mr. DAVID: Does that kind of teaching—teaching against discrimination—exist today in our schools and universities in Canada?

Professor SCOTT: I am sure it does in some schools.

Hon. Mr. DAVID: But as a general practice?

Professor SCOTT: As to whether there is a general policy of that nature in our schools and universities, I very much doubt it.

Hon. Mr. KINLEY: Do they not say that the ancient Greeks had the best laws, but the people were so bad that they had to have such laws?

Hon. Mr. DAVID: Yes.

Hon. Mr. DUPUIS: I remember a philosophy lesson which I learned when I was very young. It was to the effect that it is useless to put laws on the statute book unless they are lived up to in the souls of the individuals, because they can not be applied otherwise.

Professor SCOTT: That is true, senator, but I do repeat that law has an educative effect. It is a positive force in society.

Hon. Mr. DUPUIS: Perhaps philosophy is changing its reasoning today.

Professor SCOTT: I think the philosophy of law is certainly changing. We think of law now in the terms of social engineering. Law is a force itself that gets things done that otherwise would not be done. It is a constructive and creative influence in society, and to my mind the legal statement of the principles of human rights and fundamental freedoms is of the greatest importance.

The CHAIRMAN: There is sometimes a statement of common intention and a rule of action. I remember a little incident that occurred when I was quite young. We rode bicycles in those days instead of automobiles, and the bicycles used to pass the street car on the devil strip. Everybody thought that was the right thing to do, to show how steadily they could ride these infernal machines.

It nearly drove the motormen crazy because they were always afraid that they were going to hit and kill someone. One day the city council passed a bylaw prohibiting the passing of a street car by a bicycle on the devil strip, and everybody stopped this practice, not because of the penalties that might be imposed but because a new rule of conduct had been formulated by the proper authorities. Its value was recognized and public behaviour followed. I thought it was a splendid, though humble example, of what law can sometimes accomplish.

Hon. Mr. DAVID: Yes, but that could have been accomplished the same way through education in the family.

The CHAIRMAN: Oh, yes.

Hon. Mr. KINLEY: Professor Scott is dealing with our Canadian provinces and is not going outside. His is a Canadian problem of what we should do. I take it from his brief that our Bill of Rights should be the minimum. Now, I should like to know what arguments there are against a Bill of Rights. Professor Scott, you have given us a very fine brief. I consider this to be most splendid.

The CHAIRMAN: A masterpiece.

Hon. Mr. KINLEY: Yes, but there are arguments against having a Bill of Rights and Professor Scott knows them. What are the arguments presented against a Bill of Rights in Canada?

Professor SCOTT: I do not know whether I can argue so well against my own convictions as I can in favour of them, but I have been in arguments with people who are just as sincerely in favour of human rights as you and I are and who do not think it is necessary to formulate these rights in a constitution. They generally speak about the experience of England where there has not been the formulation of these rights in any kind of way that binds parliament. The argument is that you have to trust your legislatures ultimately and you have to trust the spirit of a free people to look after themselves, and the attempt to bind down your people at a given time is likely to do as much harm as good. They cite as an example the clause in the American constitution, "protecting contracts from violation by legislative action by the states". This clause turned out to be a method for preventing much needed social legislation from going through in the various states because this social legislation was considered to violate certain existing contracts. In protecting the contracts against violation they were stopping the advancement of social legislation; in other words, the definition of a right may in the hands of the courts be interpreted in such a way as to prevent things being done which need to be done.

Hon. Mr. KINLEY: It is static.

Professor SCOTT: Yes, it is too static and too rigid, and too apt to impose difficulties upon legislation action in the future that will not be in the best interests of the country.

The CHAIRMAN: Your Bill of Rights as distinguished from a constitutional amendment would not do that, would it, because the Bill of Rights could always be altered by subsequent amendment?

Professor SCOTT: They point out too that there are no absolute rights. You define the right of freedom of speech in a Bill of Rights, but everybody knows there are limitations to what the law can tolerate in the freedom of speech, and then you begin to impose these limitations and immediately the definition of right ceases to have some of its meaning. I was reading the other day the new constitution of the state of Czechoslovakia since the communists took over the country. They may define human rights as all the rights in the international declaration, but at the end of every declaration there is a little qualification clause saying, "Except as legitimately restricted by law", which of course allows any degree of restriction. Therefore, there is no more right after you have

written the thing down than before. I am sorry I am putting it so well because I do not really feel it is a valid argument.

Some Hon. SENATORS: Oh, oh.

Professor SCOTT: But that is the kind of argument people advance when they say we have to trust our legislative representatives and our traditions of democracy, and that we would not be any better off if we formulated a Bill of Rights.

The CHAIRMAN: Is there not a great difference between Canada and Great Britain? Great Britain with its insular position and long experimentation in law and constitution and parliamentary government is different to a country like Canada that has a widely dispersed population of a most complex character, some of them having the old tradition of England and some not. Is there not a very great distinction between these two?

Professor SCOTT: I think there is a valid distinction drawn. We have eleven legislatures in this country and they have only got one. They can concentrate public opinion on one parliament and they can bring to bear upon it their traditions of parliamentary freedom. Further, we do not know whether the English would not have produced a Bill of Rights if they could have had a kind of constitution to put it into. They have, in fact, as I have indicated, written the Magna Charta, and the Bill of Rights of 1688, which is still law. There are also other documents containing human rights such as the Act of Succession of 1701, and I would consider that the Statute of Westminster contains the concept of freedom inside a commonwealth. Although it is in technical language it embodies a very great idea. England, in other words, has in fact written rights into particular statutes, even calling one of them a Bill of Rights, though she is incapable by the nature of her constitution of binding her future parliaments.

Hon. Mr. KINLEY: Do you think that the rights of the people of Canada have in the past been very much invaded? For instance, you spoke of the Japanese citizens. Do you know of any other glaring action when the rights of the people of this country were invaded?

Professor SCOTT: I did not put into this brief examples of violations of rights in Canada, not because I could not have produced in my opinion quite a number of such examples, but it seemed to me that whether or not they existed, the validity of my argument stands. It is not only for Canadians we are doing this, but as members of a world community, and it seems to me every time a new nation comes forward and does something positive on human rights in its constitution, it adds to the strength of the influence and force throughout the world. But, in answer to your question, I can give you another example. For instance, in the recent legislature of Quebec a law was passed for the first time imposing press censorship in Canada in regard to immoral illustrations. And the Film Board or some other body is now going to censor certain periodicals. I doubt very much whether that is the way to handle the problem of immoral publications, if there is a problem. In fact, I am convinced it is a poor way. We have had a number of examples of discrimination against race in various sections in the past four or five years. On the statute books of Alberta there is a law prohibiting the purchase of land by Hutterites, unless it is more than forty miles from a previously existing community, a law which in my view introduces something close to the ghetto—although that is too strong a term to apply to it. The Prince Edward Island Trade Unions Act of 1948 has been so amended in 1949 as to take out of it many of the unfortunate principles of law that were in the original statute, but a statute like the original one could be enacted again. I do not think there is any part of Canada from which examples cannot be taken.

Hon. Mr. KINLEY: People argue so much from examples that it is well to have all the instances that you consider to be invasion of civil rights.

Professor SCOTT: I happen to know, sir, that you will be given that information by the Toronto Association on civil rights. I have seen their brief.

The CHAIRMAN: I am afraid we shall have a lot of it before we are through.

Hon. Mr. KINLEY: The thing that bothers me is the practice of some ambitious civil servants—no doubt acting in good faith—to seek to make the enforcement of the law easy by having a provision that the person charged with an offence is presumed guilty unless proven to be innocent.

Professor SCOTT: I think that is a great violation of the fundamental principle of the presumption of innocence. The Bill of Rights would protect the public against those ambitious civil servants.

Hon. Mr. DAVID: Professor Scott, I am not here to defend the present government of the province of Quebec, but I should like to ask you about what you referred to as an encroachment on freedom of the press, the prohibition of immoral pictures. Do you not draw a distinction between licence and liberty in this matter? If something is really immoral, should there be liberty to distribute it?

Professor SCOTT: No, but I think the experience of all countries where freedom of the press is a real thing is generally that the greatest distinction should be made between prior censorship by an administrative body without a trial in a court, and trial of the publisher in court under the criminal law. There is plenty of criminal law at the moment to prohibit obscene publications, and my criticism is not that something is being done about immoral publications but that the method of doing it is one that easily leads to the prohibition of publications that are not justifiably kept out of circulation.

The CHAIRMAN: What Professor Scott objects to is the technique—bureaucratic regulations providing what you and I may read.

Professor SCOTT: Yes.

Hon. Mr. KINLEY: I suppose there are some things that we should not read.

Hon. Mr. DAVID: We are all bound by various laws. In Canada, for instance, we are bound by federal laws, provincial laws, municipal laws, school laws, and, if we are married, by wife laws.

Professor SCOTT: Even the Bill of Rights does not protect us against the last mentioned laws.

The CHAIRMAN: If there are no other questions, I wish to thank Professor Scott for his excellent brief.

Hon. Mr. DAVID: It was a splendid brief.

Hon. Mr. KINLEY: It seems to me that before the committee concludes its work we should be told what rights we have now. Are there any statutes which specifically set out our rights?

The CHAIRMAN: I received yesterday a letter from Professor MacKenzie, of the University of British Columbia, in which he suggested that we have prepared a document describing the rights we now enjoy. I have been trying to get hold of Mr. Varcoe to pass on that suggestion to him. It may be that incidentally some of the number of witnesses we will have before us may deal with the subject. I intend to ask Mr. Varcoe if it is possible for him to have a document of that kind prepared,—what are the rights we now enjoy as provided by law?

Professor SCOTT: Those rights are scattered through so many statutes. For instance, take the Elections Act. You do not see the right to vote and to run for Parliament set out in a nice stimulating fashion. It is buried in legal

language. The right is there, and it is protected by law. But the advantage of a bill of rights is that you have the positive affirmation of these principles in a single document, so that they can all be seen together and appreciated. Otherwise it takes a very careful eye to perceive rights scattered throughout the statute book.

The CHAIRMAN: To perceive the principle that runs through the details.

Professor SCOTT: Right.

Hon. Mr. DAVID: I think you might ask Professor Scott the question we asked Mr. Gordon. A law without sanction is worth nothing, or very little. What will be the sanction? Today Canada has a government with human rights and fundamentals of freedom.

The CHAIRMAN: The question is a good one.

Professor SCOTT: My recommendation, sir, was that we put into the British North America Act as a fundamental law of the constitution these rights, from which it follows that there is a very efficient sanction, because if any legislature, either federal or provincial, subsequently passes any statute violating those principles, that statute will be *ultra vires*, and will be so declared by the courts. Nobody need obey that statute. I cannot think of any sanction more efficient than that for the purposes of restraining the future legislative activity of any Parliament which might tend to violate human rights. In respect of the Criminal Code there is always the sanction of the enforcement of the Code.

The CHAIRMAN: Now you are getting to the field of a bill of rights as distinguished from an amendment of the constitution.

Professor SCOTT: Yes.

The CHAIRMAN: We must keep those two things clearly in mind. What do you say about a sanction of a bill of rights as to which the Criminal Code would be comparable?

Professor SCOTT: I would say that a federal bill of rights, not an amendment of the constitution but just enacted by the federal parliament within its jurisdiction, would be as enforceable as any other federal law; and Parliament could decide by what step it would be enforced. In so far as it has a criminal aspect, as it would have very largely, the enforcement is through the criminal courts. Since it is a law of Parliament it can be enforced like other laws. What I am talking about now is very different from what Mr. Gordon has been talking of in terms of an international declaration. It is more closely related to what he has been talking about in terms of the covenant, because if the covenant goes through, as it undoubtedly will, and Canada ratifies it, we will then have ratified a treaty. Parliament has power then to enact a statute to give effect inside Canada and within Dominion jurisdiction to the terms of that treaty.

The CHAIRMAN: It would still be within Dominion jurisdiction.

Professor SCOTT: It would have to be within Dominion jurisdiction.

The CHAIRMAN: We have no power to enforce the treaty as it relates to provincial jurisdiction.

Professor SCOTT: One other point which I might just refer to. Article 24 of the draft covenant on international rights contains the provision that in a federal state, if the covenant is ratified, the obligation of the ratifying power is to enact laws to give effect to those parts of the covenant that are within the federal jurisdiction; and with respect to parts of the covenant which are not under federal jurisdiction the obligation of the ratifying power is to refer those to the provinces, states or cantons.

The CHAIRMAN: Yes.

Professor SCOTT: In other words, the covenant will take into account the existence of federal states.

Hon. Mr. GOUIN: Mr. Chairman, Professor Scott referred to an amendment to the British North America Act. I should like very much to have some further explanation given as to what he has in mind. It is very clear from his last remarks that the subject of human rights and fundamental freedoms and so on, is partly a matter belonging to this Canadian parliament and partly a matter belonging to the provincial legislatures. Professor Scott, you referred to an amendment to the British North America Act as far as the Canadian parliament is concerned, but we already have the power to make such an amendment in federal matters. However, I am under the impression that you have a wider scheme in mind, and I should like to know a little more about how you look at this very difficult problem.

Professor SCOTT: I think, Senator Gouin, my wider scheme is to have a draft statement of the principles of fundamental freedoms and human rights that we wish to put into the constitution, prepared by a committee and have it referred to the conference now continuing on the amendment of the constitution for its consideration. Then, if and when adopted, have it enacted as law by the United Kingdom parliament and placed in that part of the B.N.A. Act which cannot in future be amended, save by the unanimous consent of the federal parliament and all provincial legislatures. As I said before, the dominion-provincial conference on the constitution has agreed that there shall be some entrenched clauses such as on educational rights. These will be the most difficult parts of the constitution to amend in the future, and I think it is along with these that these fundamental rights should go. They are of the same character. It would still be possible for Canadians to get rid of their fundamental freedoms later by unanimous consent if they wish to do so.

Hon. Mr. DAVID: Suppose tomorrow that the federal authorities accept the entrenchment in favour of certain privileges and rights. The parliament votes for it, and he who votes for a law has the right to amend it. Even supposing that these amendments must be with the consent of the federal government and all the provinces, can it be amended just the same by the parliament of Canada?

Professor SCOTT: I do not think so, senator.

Hon. Mr. DAVID: He who makes the law has the right to amend it.

Professor SCOTT: We cannot put anything in the entrenched clauses now without using the United Kingdom parliament and the sovereignty of that parliament, and when it ceases to continue we shall have a constitution which in theory is superior to and binds all the legislatures created by it, exactly as the American constitution is superior and binds all their legislatures.

The CHAIRMAN: Yes, but the American constitution wells from the people, while ours recognizes the superiority and supremacy of parliament.

Professor SCOTT: Of the United Kingdom parliament.

The CHAIRMAN: At the present moment, yes, but if that goes by the board, as there are indications it will, then it will be the superiority of the Canadian parliament. The most fundamental statement in our constitution is that the government of Canada is vested in the Queen. The most fundamental statement in the United States constitution is that it is vested in the people, and there is a distinction in practice if not in principle between these two jurisdictions.

Professor SCOTT: But the same problem has been met with respect, for instance, to the new constitution of India. The United Kingdom parliament only recently had jurisdiction over the Indian people and could make laws that bound

them just as it still makes laws that bind Canadians. Until recently the United Kingdom Parliament had jurisdiction over the Indian people and could make laws binding them, just as it still can make laws that bind Canadians, but the constitution of India has now gone into effect and the United Kingdom Parliament has no longer any power to make laws for India.

Hon. Mr. KINLEY: Did you say that the United Kingdom Parliament can still make laws binding the Canadian people?

Professor SCOTT: Oh yes, sir.

Hon. Mr. KINLEY: Our latest Westminster amendment did not absolutely take us out, but it did take us out on federal affairs.

Professor SCOTT: The United Kingdom Parliament has not yet signed off for Canada, though it has now signed off for all the other members of the Commonwealth.

Hon. Mr. KINLEY: Has it not signed off for Canada in so far as the federal parliament is concerned?

Professor SCOTT: That is what the federal-provincial conference is concerned with. When it does sign off we shall have a new constitutional theory to take the place of the theory of Imperial sovereignty.

The CHAIRMAN: But will there not remain a distinction between the theory of government in the United States and the theory of government in Canada? Even after the forecast change takes place, shall we in Canada not look to parliament as being supreme, whereas in the United States the people are supreme?

Hon. Mr. KINLEY: That is only a matter of words, is it not?

The CHAIRMAN: No, it is more than words. The Constitution of the United States, as drafted in 1787, says...

Hon. Mr. DAVID: It says "We, the people of the United States." Here we have not said that.

The CHAIRMAN: The distinction was tested in some Manitoba legislation which attempted to institute initiative and referendum law. Our courts held that it was unconstitutional, that the final authority in Canada vested in the legislature, within the legislature's jurisdiction, and beyond that in the federal parliament, and did not vest in the people, and that therefore a referendum law was unconstitutional. That situation will persist, I take it, even after the constitutional development whereby the United Kingdom signs off and leaves our parliament free.

Professor SCOTT: Our problem is not greater than that of Australia, which also has a parliamentary tradition. Australians know very well that if their Commonwealth parliament attempted to pass a law contrary to their constitution, it would not be treated as law. The real defence of our federal system is the tradition of the courts in declaring *ultra vires* any statutes which violate any provisions of our constitution. I do not believe there is a danger that, just because the United Kingdom has signed off, the central legislature in Canada will consider it is no longer to be bound by sections 91 and 92 of the British North America Act. I think the legal tradition of declaring statutes *ultra vires* where necessary will continue and amply safeguard us against the creation of a unitary state.

The CHAIRMAN: Professor Scott, I find it difficult to express the admiration that I feel for your presentation of this wonderfully thoughtful and helpful brief. We are indeed grateful to you for the imaginative and masterly way in

which you have handled this subject that we are all interested in. It has helped us a great deal. You have clarified my mind on many things, and I thank you sincerely.

Professor Scott: I do appreciate having had this opportunity to appear before the committee.

The committee adjourned until tomorrow, Wednesday, April 26, 1950, at 10.30 a.m.

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Special Committee on 1950
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THE SENATE OF CANADA
PROCEEDINGS
OF THE
SPECIAL COMMITTEE
ON
HUMAN RIGHTS
AND
FUNDAMENTAL FREEDOMS

No. 2

Wednesday, April 26, 1950

CHAIRMAN:

The Honourable Arthur W. Roebuck

WITNESSES:

Mr. Irving Himel and Dr. Malcolm W. Wallace, Association of Civil Liberties.

Mrs. Robert Dorman, National Council of Women of Canada.

Mrs. E. R. Sugarman, National Council of Jewish Women of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
KING'S PRINTER AND CONTROLLER OF STATIONERY
1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for
20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the Province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood.

That the said Committee shall have authority to send for persons, papers and records.

Attest.

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 26, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators: Roebuck, Chairman; Baird, Doone, Gladstone, Kinley, Petten, Reid, and Turgeon—8.

The official reporters of the Senate were in attendance.

Mr. Irving Himel and Dr. Malcolm W. Wallace, of the Association for Civil Liberties; Mrs. Robert Dorman, Mrs. G. D. Finlayson, and Mrs. T. D. Clark Hamilton of the National Council of Women of Canada; Mrs. E. R. Sugarman, and party, of the National Council of Jewish Women of Canada, were present.

Mr. Himel and Dr. Wallace read the brief of the Association for Civil Liberties on Human Rights and Fundamental Freedoms, and Mr. Himel was subsequently questioned by members of the Committee.

Mrs. Dorman read a brief on behalf of the National Council of Women of Canada, and Mrs. Finlayson and Mrs. Hamilton interpolated explanations.

Mrs. E. R. Sugarman read a brief in support of a Canadian Bill of Rights, and was questioned by Members of the Committee.

At 1 p.m. the Committee adjourned until Thursday, April 27, 1950, at 10.30 a.m.

JAMES H. JOHNSTONE,

Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Wednesday, April 26, 1950.

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Honourable Mr. Roebuck in the chair.

The CHAIRMAN: Gentlemen, we have a splendid program this morning. There are three briefs to be presented, the first of which will be by the Association for Civil Liberties. This is a Dominion-wide organization, centred in Toronto and the secretary is Mr. Irving Himel.

May I be pardoned if I make a personal reference on behalf of Mr. Himel and myself? Mr. Himel met me on a street corner in Toronto not so very long ago, and suggested that we in the Senate should give some attention to the question of human rights and fundamental freedoms. I agreed with him, and we discussed the question at some length. I then made the comment that perhaps that might be my contribution to the next session of the Senate. It is a rather well established principle that great oaks from little acorns grow, and it was as a consequence of that conversation that I moved the original resolution on human rights and fundamental freedoms which, as you know, occupied considerable time and attention of the Senate throughout the entire last session, and occupies some prominence in the Senate program for this session. So if I may I should refer to Mr. Himel as the originator of all our troubles. May I now call on Mr. Himel to address the committee?

MR. IRVING HIMEL: (Executive Secretary, Association for Civil Liberties). Thank you, Senator Roebuck, and honourable senators. I am very flattered to think that I had something to do with the establishment of this committee; it would, however, be a mistake for anyone to think that any single person or any group of persons is responsible for a great interest in human rights and fundamental freedoms in Canada. The interest exists, and the fact is that some individuals may take it up and give voice to it. There is very wide interest in the subject, not necessarily from an idealistic point of view but from a very practical and serious standpoint. I hope that our brief will in some way help to convey to you the importance and seriousness of this matter.

It is a great opportunity, in my submission, for the Senate, and in turn Parliament, to do something on a subject of pressing concern.

With those introductory remarks, I should like to proceed with our brief and first give you a general idea of whom we are and what organizations are supporting this brief. I will not take the time to read it. On page two you can see the officers of our association, and some of the organizations that have already indicated their support to our brief. I may say that there are, as I expect, a great number of national bodies which will be endorsing our brief, as well as those from whom we have intimations to that effect.

I should like at this time to introduce a gentleman who is vice-president of our association and who as an educator is as well known to the people of Canada, especially the young men, as anyone. I present Dr. Malcolm W. Wallace, Principal Emeritus of University College, Toronto University. I think he has students who graduated under him, in every part of Canada. I have much pleasure in asking Dr. Wallace to read a portion of the brief, after which I will take over and read the rest.

Dr. MALCOLM WALLACE: Mr. Chairman and members of the Senate of Canada, as Mr. Himel has said, we are presenting this brief on behalf of the Association for Civil Liberties.

The Members of the Association's Executive include:

President, Rev. D. R. S. K. Seeley; vice-presidents, Prof. Harry M. Cassidy, Rabbi A. L. Feinberg, Mrs. W. L. Grant, Charles H. Millard, M.P.P., Joseph Sedgwick, K.C., Dr. Malcolm Wallace; treasurer, Rev. W. P. Jenkins; executive secretary, Irving Himel. Chairman, Committee for a Bill of Rights, Dr. B. K. Sandwell. Chairman, for Committee for Academic Freedom, Dr. Malcolm Wallace. Chairman, Committee on Group Relations, Miss Vivien Mahood. Chairman of Legal Committee for Civil Rights, J. S. Midanik.

The brief is also supported by the following Organizations:

National Student Christian Movement, Canadian Council of Youth Groups, Inter-Ethnic Citizens' Council of Toronto, Hamilton Labour Council, National Council of Jewish Women, Fellowship of Reconciliation, Canadian Japanese Citizens' Association, London Inter-Race Inter-Faith Committee, Joint Labour Committee to combat Racial Intolerance, Chinese Community Centre of Ontario, Wakunda Foundation, Toronto Lodge, B'Nai B'rith, Unity Organization of Dresden, Ontario, Local 252, United Automobile Workers, Toronto, United Steel Workers of America, Local 3129, Toronto, Toronto Christian Brotherhood of Coloured People, United Steelworkers of America, Local 1305, Hamilton, First Unitarian Congregation, Toronto, Toronto World Federalists, Ladies' Auxiliary Brotherhood of Sleeping-car Porters.

May we, on behalf of the many Canadians whom we represent, congratulate the Senate on its establishment of this Committee. May we also say how glad we are that you have agreed to serve on this Committee. We are well aware that your doing so was at some considerable personal sacrifice. It should be a source of no small personal satisfaction to you, however, to know that large numbers of your fellow countrymen deeply appreciate what you are doing. And we are confident that future generations of Canadians will have even greater cause to be indebted to you.

From the motion which the Senate passed setting up your Committee, we take it that your task is to consider and report on the subject of human rights and fundamental freedoms with these questions in mind:

1. What are the human rights and fundamental freedoms every Canadian should have?
2. How may they be protected and preserved?
3. What action, if any, can or should be taken to assure human rights and fundamental freedoms to all persons in Canada?

We propose in this brief, therefore, to attempt to answer these questions in the hope that our views will be of some assistance to your Committee in making its report.

I.

What are the human rights and fundamental freedoms every Canadian should have?

In our opinion, every person in Canada should be able to say that he has these human rights and fundamental freedoms:

1. Everyone has the right to life, liberty and the security of person.
2. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

3. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

4. Everyone has the right to recognition throughout Canada as a person before the law.

5. All are equal before the law and are entitled without any discrimination to equal protection of the law.

6. Everyone shall have the right to freedom from discrimination because of race, colour, religion or national origin, in employment, education and public places.

7. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

8. (1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

9. Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

13. Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

14. (1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage and at its dissolution.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

15. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

16. Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

17. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

18. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

19. (1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

20. Every person is entitled to all the rights and freedoms above set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Any person whose rights or freedoms as herein provided have been violated, may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

You can see that these rights and freedoms are, except for Article 6, the same as the draft articles in the text of the motion establishing this Committee. They also appear in the United Nations Universal Declaration of Human Rights, which was unanimously adopted by the United Nations General Assembly on December 10th, 1948, by a vote of forty-eight nations, including Canada.

I suppose the unanimity was secured largely because it did not bind anybody to anything in particular at the time.

These are political rights, substantially. It might be urged that socially and economically human rights are of as much importance. We do not propose to discuss those, however—though we think they are of great importance—because it is very difficult indeed to make social and economic rights matters of legal right.

Hon. Mr. KINLEY: Are you reading from the brief, or speaking ad lib?

Dr. WALLACE: I am speaking ad lib. Perhaps, however, I might just read the brief continuously.

Hon. Mr. KINLEY: Then we can follow you.

Dr. WALLACE: In addition to the human rights and fundamental freedoms we have mentioned, there are what may be termed the economic and social human rights. They are set out in Articles 22 to 26 of the Universal Declaration of Human Rights. These articles provide among other things, that everyone has the right to work, to periodic holidays with pay, and to protection against unemployment—the rights to choose a job and to join a union and the right to equal pay for equal work. They also provide for the right to an adequate standard of living, including housing, medical care and security in the event of sickness, widowhood and old age, as well as the right to education and to freely participate in the cultural life of the community.

We should like to state that it is our intention to confine our remarks in this brief almost entirely to the list of rights and freedoms which we mentioned at the beginning of the brief, namely, the so-called civil and political human rights. We do not therefore propose to say more than a few words regarding the economic

and social human rights. We assume that they will be amply dealt with before you by groups whose interests lie more closely in the economic and social fields. We believe, however, that it is important to recognize that the civil and political human rights occupy a somewhat different position in the scheme of things from the social and economic. For instance, it is recognized that the civil and political human rights are capable of interpretation and application by the court as principles of law, whereas the same cannot be said of the economic and social human rights. How, for example, could a court of law give legal effect to a general right to work or the right to an adequate standard of living? It should be pointed out that these rights were included in the Universal Declaration of Human Rights in the form in which they appear, for their moral effect, and not with the idea that they would have the force of law.

Much as many of us may approve of these economic and social rights in principle, and favour them as objectives to be attained, it must be admitted that they are rights which can only be properly dealt with by specific and detailed legislation, and not, as has been the case with the civil and political human rights, as part of the fundamental law of the land.

It is inevitable in a great undertaking such as this, that there will be differences of opinion as to the propriety of the language used to describe these human rights and fundamental freedoms. We do not for one moment suggest that this is the final language which should be used to describe them in a legal document. We are ready to concede that the wording could stand legal and literary refinements.

Our essential interest at the present time, is in the substance of these rights and freedoms, rather than in their form. As experienced legislators, you will know that in important human documents of this kind, one must expect people to differ somewhat in their choice of language. You will also know that, given men and women of good will, such difficulties are easily surmounted, and one might properly defer problems of this nature for the diligent and specialized skill of the legal and literary experts.

This, however, might be said in support of the language employed. First, with one exception, each article was considered and discussed very carefully by an 18-member Commission on Human Rights set up by the United Nations under the chairmanship of Mrs. Eleanor Roosevelt. Second, it took two years of continuous work to finish the job.

As Canadians we may be interested in the very important share that Professor Humphrey took in that work.

The CHAIRMAN: Hear, hear.

Third, it was reviewed and revised by a Committee of the United Nations General Assembly under the chairmanship of Dr. Charles Malik of Lebanon which took eighty-five meetings to complete their work. Fourth, it was approved by Canada and 47 other countries as a solemn act of the United Nations General Assembly after careful consideration. Finally, it constitutes a common denominator of agreement on human rights among people of many races and creeds whose customs, traditions and culture vary in a great many respects.

Hon. Mr. KINLEY: I think there was some limitation to that later. Senator David said that the Canadian delegation reserved, on account of provincial jurisdiction, its decision.

The CHAIRMAN: Yes. I understood both at the time and from what they said that the Canadian delegation pointed out the divided jurisdiction in Canada; and with that reservation, and just what it implied, which was not very fully expressed nor any attempt made to fully express it, gave their concurrence.

Dr. WALLACE: I suppose all federal governments have to make that reservation in connection with almost all their agreements, where there are divided jurisdictions.

Hon. Mr. KINLEY: Then he also brought out that this word "unanimous" is a little freely used; that there were some states that refrained from voting.

Mr. HIMEL: Quite so.

Dr. WALLACE: But there were forty-seven nations that did vote.

Hon. Mr. KINLEY: How many refrained from voting?

Dr. WALLACE: I do not know.

Mr. HIMEL: Eight.

The CHAIRMAN: My recollection is that there were five who refrained from voting, and two were not present.

Hon. Mr. KINLEY: It is well to get the record straight.

The CHAIRMAN: But everybody who did vote, voted in favour of it.

Hon. Mr. KINLEY: It should be unanimous.

Mr. HIMEL: I think, Senator, that in the United Nations procedure, if a country abstains from voting it is regarded as a vote. I may say that as far as Canada is concerned she voted for the Declaration. She made her position clear.

Hon. Mr. KINLEY: But did she adopt the principle?

Mr. HIMEL: Yes. She abstained from voting at the beginning but when the last vote was taken she voted for it.

Hon. Mr. KINLEY: That would be in the General Assembly?

Mr. HIMEL: Yes.

Hon. Mr. TURGEON: What Mr. Himel has said is correct. Before the final meeting Canada abstained, stating why. She mentioned the provincial jurisdiction, but when the final vote was taken Canada voted, just referring to the cause of her previous abstention. Then she voted for it in principle; that is, purely in principle and not as a definite undertaking to put it into effect.

Mr. HIMEL: Quite so.

It is sometimes objected that not only is it necessary to define our human rights and fundamental freedoms, but also our duties. This problem was considered at some length by the United Nations. Last summer at the conference of the Canadian Institute on Public Affairs at Lake Couchiching, Dr. Charles Malik, Chairman of the Social, Humanitarian and Cultural Committee of the Third Session of the United Nations General Assembly and Rapporteur of the Human Rights Commission dealt with this subject in these words:

the answer to this objection is that we are here dealing with the rights of man as man, and not with the rights of society or the state. Today we find ourselves in a situation, all the world over, in which man's simple essential humanity—his power to laugh and love and think and change his mind, in freedom—is in mortal danger of extinction by reason of endless pressures from every side; governmental regulations and controls, social interferences, the maddening noises of civilization, the sheer multiplicity and crowding in of events as a result of the contraction of the world, the dizziness of his mind from the infinity of material things to which he must attend.

Under this external social and material pressure man is about to be completely lost. What is needful therefore is to reaffirm for him his essential humanity: to remind him that he is born free and equal in dignity and rights with his fellow men, that he is endowed by nature with reason and conscience, that he cannot be held in slavery or servitude, that he cannot be subjected to arbitrary arrest, that he is presumed innocent until proved guilty, that his person is inviolable, that he has the natural right to freedom of thought, conscience, religion and expression; and so on down the list of proclaimed rights. It is this reaffirmation, if only he heeds it,

that might still save him from being dehumanized. [For society and the state under modern conditions can take perfect care of themselves: they have advocates and sponsors on every side; their rights are in good hands. It is man, who is in danger of becoming extinct. It is man who is the unprotected orphan, the neglected ward, the forgotten treasure. And therefore it is good that the Declaration has not lost sight of its main objective: to proclaim man's irreducible humanity, to the end that he may yet recover his creative sense of dignity and re-establish his faith in himself.

Thus, to use the words of Dr. Malik and the Universal Declaration of Human Rights, the task that faces this committee is to reaffirm for Canadians their faith in fundamental human rights, in the dignity and worth of the human person; to proclaim man's irreducible humanity.

In terms of the daily life of every Canadian, we believe these fundamental human rights, this irreducible humanity, are to be found in the specific human rights and fundamental freedoms to which we have referred and which in the main, appear in the motion of your appointment. They are to be found in a similar statement of fundamental human rights which forms the basis of the United Nations Covenant now under discussion. They are to be found in asking yourselves these questions:

1. Would you, yourself, like to be without any of these rights or freedoms?
2. Do you think any person in Canada would want to be without them?

This now brings us to the point where we have to consider the second problem suggested by your motion of appointment, namely, how may these human rights and fundamental freedoms be protected and preserved? To answer this question, one first is obliged to inquire into, how and whether they are protected and preserved at the present time.

This, it appears to us, is the situation at present. A few of these rights are constitutionally guaranteed in specific cases under the British North America Act. They include the right to use the French and English language in debates in the House of Parliament of Canada, in the Quebec Legislature, and in the courts of Canada and Quebec. The Constitution further affirms the right to denominational schools and to the separate school system of education. It also ensures that elections of members of the House of Commons must take place at least once in every five years, and of members of the Provincial Legislature once in every four years and that sessions of the House of Commons and Provincial Legislatures must be held at least once a year.

Besides these rights, which for very good reasons, the Fathers of Confederation decided to make part of our fundamental law, the only other protection, in a legal sense, an individual person has in Canada against infringement of these human rights and fundamental freedoms, is to be found, applied on the whole, to specific cases, scattered throughout our statute law, and dispersed in a multitude of law reports of court decisions. For example, some sections in different parts of the Criminal Code of Canada, provide a form of protection in the case of some of these civil human rights, to persons charged with criminal offences. An example in point of a court decision where the protection has come from the court, is for instance, the judgment of the Supreme Court of Canada in the reference *re Alberta Statutes: The Accurate News and Information Act, 1938*, S.C.R., 100, where it was held that this statute which gave the Chairman of the Social Credit Commission the power to regulate the press in Alberta was unconstitutional.

I am going to hand over the brief now to be dealt with by my colleague, Mr. Himel.

Mr. HIMEL: If I may just continue:

In the case of many of these human rights and fundamental freedoms however, possibly some of the most important, we do not have at present any general, definite legal means of protection. One is entitled to say, we think, that this is true of such rights as the right of freedom of speech, freedom of the press, freedom of religion, freedom of association, freedom from discrimination. These rights, if one can speak of them as rights, at the present time exist for every Canadian only through a process of legal implication or inference.]

At this point it might well be asked, is there any need to change our present method of protecting and preserving human rights and fundamental freedoms in Canada? We strongly urge that there is.

We submit that this need exists because at the present time such rights and freedoms of the person as are protected by law in Canada, are too diffuse, and one almost has to be a lawyer to know what they are. There is a real need to consolidate our human rights and fundamental freedoms in a single document, so that every person in Canada will know and not have to guess what his or her fundamental rights are. One cannot overemphasize the immense value that such a document would have in educating all sections of the Canadian people to a greater understanding of their rights and freedoms and respect for the rights and freedoms of others. Consider what a powerful organ of education it would be in the schools, in our churches, through the medium of the radio and press, the courts and our communal organizations!]

We submit further that this need exists because of the lack of uniformity which can and has prevailed in Canada in respect to these human rights and fundamental freedoms. This derives in part from the fact that Canada is a country in which the power to pass laws is divided between the Federal Government and 10 Provincial Governments, each of which is supreme in its own jurisdiction. It has been known to happen on numerous occasions, that what was the law relative to a particular fundamental human right in one part of the country, varied considerably from the law on the same subject elsewhere in Canada.

This lack of uniformity also derives from the fact that Canada is a heterogeneous country, comparable to the United States, with a plural population composed of people from numerous races, nationalities and creeds having varying traditions and cultures and many of whom are recent immigrants. At the present time, these and other conditions tend to promote diversity in the field of human rights and fundamental freedoms, a field in which uniformity is most desirable, indeed, we would suggest necessary. We have created an important instrument of uniformity in regard to our fundamental human rights, by making the Supreme Court of Canada the court of last resort. What we have overlooked is to provide them with the necessary tools to make this uniformity possible.

A third persuasive reason, in our judgment, for changing our present method of protecting fundamental rights in Canada, is that we have all witnessed in this modern world that governments cannot always be relied upon to respect the human rights and fundamental freedoms of the person. Our history books are replete with examples which point to the moral that it is not prudent to give government almost absolute legal power over our rights and freedoms.

If there is one lesson modern history should have taught us, it is this—that it is a very wise thing for the people of any country to have proper checks, such as a constitutional guarantee, on the power of government to take away our most precious liberties. This theory is recognized in our Constitution in the case of the right to use the French and English languages in Parliament and in our courts, the right to the separate school system of education, the right to periodic elections and regular sessions of Parliament and the Provincial Legislatures.

One might fairly ask why should we stop with these? Is it not equally, if not more important, that every person in Canada should be constitutionally guaranteed the right of freedom of speech in the French and English languages, as it is that they should have the right to use them? Certainly what we have the right to say should be no less protected than the language in which we have the right to say it.

The Constitution recognizes the right to the separate school system of education. This, however, is only one aspect of the whole concept of the right to freedom of religion. One is entitled to ask if it is important to protect this right in the Constitution, which we do not question, is it not likewise important to protect other religious rights in the Constitution? Should not the Constitution, we ask in all sincerity, then be enlarged so that these other religious rights are also protected by a clause which recognizes that every person in Canada is entitled to the right of freedom of religion? By parallel reasoning, one might say the same of the other fundamental human rights.

Finally, and perhaps most important of all, we need to change our present legal method of protecting human rights and fundamental freedoms because in fact, this method is not providing the individual Canadian with the protection it should.

We leave it for you to say whether in the face of these well-known cases of infringement of fundamental human rights which were possible in Canada in recent years, the liberties of the person are sufficiently protected in our country at the present time:

1. In one of the provinces a law was passed prohibiting membership in a trade union outside the province. ✓
2. There is provincial law in force which empowers municipalities to pass by-laws, prohibiting the distribution of literature and printed matter generally, without a permit. ✓
3. Not so long ago, an Order-in-Council was passed, which the Privy Council said was perfectly legal, and which, if it had been enforced, would have exiled, without charge or trial, about 10,000 Canadian citizens because of their race. ✓
4. Under a provincial law, the premises of anyone suspected by the Attorney General of the province of promoting a particular political ideology may be closed, in his absolute discretion, for a period of one year. ✓
5. There was a federal law which for a long time refused to allow a married man who was a citizen of Canada, to bring his wife and children here because of his race. ✓
6. In one of the provinces, a designated Minister of the government is permitted by law to detain a juvenile offender for as long as two years beyond the term of his penal sentence. ✓

7. Up until fairly recently, it was a provincial law to deny the right to vote to certain people because of their race. (In fact, this disability still prevails in Canada against certain native Indians) 1967

Hon. Mr. KINLEY: Is it true that the Indian is debarred from voting because of his race?

The CHAIRMAN: He is denied the right to vote because he is a ward of the state.

Hon. Mr. REID: And he is a ward of the state by choice. He may become a Canadian at any time he wishes.

The CHAIRMAN: It is open to question and argument whether we should continue that system, but, as I understand it, it is not because of race that Indians are prevented from voting. Any Indian who decides that he will no longer be a ward of the state is given the right to vote.

Hon. Mr. KINLEY: Is it true that the Indian is debarred from voting because of their race?

Mr. HIMEL: Let us say a man is in a penal institution; he is in effect a ward of the state. There is nothing in our law which says he is barred from voting, but I do not think there is any provision for him to vote in penitentiary. Of course, when he comes out he is allowed to vote.

Hon. Mr. KINLEY: Would you advocate that he be allowed to vote in the penitentiary?

Mr. HIMEL: We are only dealing with the principle that people should not be denied the right to vote because of their race.

Hon. Mr. KINLEY: You say, "Up until fairly recently, it was a provincial law to deny the right to vote to certain people because of their race." What people have you in mind?

Mr. HIMEL: That is quite true. That applied in British Columbia against Japanese people and against Chinese and against Hindus.

Hon. Mr. KINLEY: As a wartime measure.

Mr. HIMEL: No, that was the law for a long time and it was only changed in about 1948 or 1949.

Hon. Mr. KINLEY: Were they denied the right to vote if they were Canadian citizens?

Mr. HIMEL: If they were Canadian citizens.

Hon. Mr. KINLEY: That has been changed?

Mr. HIMEL: That has been changed. We are not arguing these cases as cases; we are arguing them as principles. We say that if you can take away a human right once you can take it away again, unless you do something to prohibit its being taken away. If there is the legal power to take away a human right at one time, that power remains unless something is done to abolish it. I submit that there are certain fundamental human rights which no government should have the power to take away. Otherwise, we have not got rights, we have only got privileges. I will come along to that position a little later.

8. Under an Order-in-Council passed in 1947 and which is now repealed, the freedom of movement of people of a certain race was restricted so that they were not permitted to enter one of the provinces without a permit.

9. The license to operate a tavern was cancelled by order of an Attorney-General of a province in Canada because the person in question went bail for members of a particular religious group.

10. The ownership of property in one of the provinces has been restricted by law so that the people of a particular religious group cannot purchase land unless it is 40 miles away from another settlement of their co-religionists.

11. Another provincial law provides that the local authorities can require a person to obtain a permit before a public meeting can be held.

12. The right of habeas corpus has been denied by law in Canada.

13. A recent provincial law authorizes a government-appointed Board of Censors to prohibit the distribution of any magazine or periodical containing any illustration which the Board decides is an immoral illustration. No right of appeal is given from its decision.

14. About a year and a half ago, a person was arrested in a Canadian city and charged with being a public mischief. He was suspected of being implicated in a murder. For 4 weeks he was held without bail on the charge of public mischief. During 3 of those weeks, he was without benefit of counsel. On one occasion it is reported he was questioned for 17 straight hours by the police. At the end of 4 weeks, bail was set at \$20,000 property, \$10,000 cash. At the end

of six weeks he was allowed out on bail of \$4,000. Eventually the charge of public mischief was dropped against him, and he was completely absolved by a coroner's jury of any connection with the crime.]

15. By legal measures, people in Canada have been excluded because of their race from employment in certain occupations. While these practices have been almost entirely eliminated, there are many employers who still practise racial and religious discrimination in employment. Moreover, discrimination is not confined to employment. It is also found in public places, as for example, in a small Canadian town where the majority of the restaurants and hairdressing establishments will not serve some people because they are of a certain race. N.B.

16. Under Tariff Item 1201, forty-five books and twenty-three newspapers were refused entry in Canada, while in 1949, eighty-one books and twenty-two magazines and newspapers were denied admission by officers of the Department of National Revenue, without right of appeal.

It would not be difficult to cite additional cases where fundamental human rights have been violated. But we believe sufficient has been said to make us aware of the profound meaning behind the words of Mr. Justice O'Halloran of the British Columbia Court of Appeal when in a recent article he wrote:

"No Canadian can rest content unless he is convinced that his citizenship as such guarantees to him constitutionally equally full rights as are enjoyed by his friends and neighbours in the United States of America."

And of the words used by Mr. Justice Angers of the Exchequer Court of Canada in the case of *Belleau v. Minister of National Health and Welfare et al.* 1948 Ex. CR 288, at p. 320, where he said:

"There are in my judgment too many encroachments by Ministers, Deputy Ministers and functionaries in the judicial as well as the legislative field; if they are not curtailed, the country may in a not too remote future be ruled by a dictatorial government."

It follows from what we have said that there is a real need for more adequate legal protection of the fundamental human rights of the individual in Canada than at present exists. We would next like to consider how these fundamental human rights may be more adequately protected.

First and foremost we believe Canada should have a Bill of Rights in her Constitution. To the extent that the Constitution now provides guarantees for the French and English language, the separate school system, periodic elections and sessions of Parliament and the Provincial Legislatures, as we pointed out earlier, we already have the nucleus of a Bill of Rights. (Our submission is that there is no valid reason why the Constitution should not be extended to take in the other human rights and fundamental freedoms mentioned earlier in this brief.)

Certainly they have an equal claim to a place in the Constitution. Together they would constitute a Bill of Rights to which every person in Canada could point with pride and call his own.

The value of a Bill of Rights in the Constitution becomes at once apparent because by having these fundamental human rights constitutionally guaranteed, the different governments in Canada, not to speak of the courts and the private individual, would be bound by law to respect them. And in the event one's rights were infringed a person could go to the courts and seek redress.

This is no more than is prudent and just. As Thomas Jefferson once said, "I have a right to nothing which another has a right to take away. A Bill of Rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse or rest on inference."

As another great figure of history, the late Mr. Justice Cardozo of the Supreme Court of the United States said: "The utility of an external (judicial) power restraining the legislative judgment is not to be measured by counting the occasions of its exercise. The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders. By conscious or subconscious influence, the presence of this restraining power, aloof in the background, but nonetheless always in reserve, tends to stabilize and rationalize the legislative judgment, to infuse it with the glow of principle, to hold the standard aloft and visible for those who must run the race and keep the faith. Great maxims, if they may be violated with impunity, are honoured often with lip-service, which passes easily into irreverence. The restraining power of the judiciary does not manifest its chief worth in the few cases in which the legislature has gone beyond the lines that mark the limits of discretion. Rather shall we find its chief worth in making vocal and audible the ideals that might otherwise be silenced, in giving them continuity of life and of expression, in guiding and directing choice within the limits where choice ranges. This function should preserve to the courts the power that now belongs to them."

In addition, as we have shown earlier, a Bill of Rights would be of great value in consolidating our human rights and fundamental freedoms in a single document, so that every person in Canada would know and not have to guess what his or her fundamental human rights are.

It is not hard to imagine what a powerful organ of education it could be in our school system, in training children and adults alike to respect fundamental human rights, in our churches, in our courts, in our communities, and through the newspapers, radio and other mediums of expression.

Finally, one cannot overlook the important value of a Bill of Rights would have in promoting uniformity in the field of fundamental human rights in a heterogeneous country such as Canada, where jurisdiction is divided between a federal and ten provincial governments.

It has been suggested that a Bill of Rights may encourage licence. There is no evidence to support this view, unless the right to disagree is to be taken as a form of licence. Those who have faith in our courts, in our institutions and people, need have no fear that they will not provide necessary safeguards against the unwarranted abuse of freedom.

It may be said that we do not need a Bill of Rights in Canada because Great Britain does not have one. This argument fails to take into account that Great Britain is constituted differently from Canada. She does not have the same problem of divided jurisdiction that we have in Canada. She has only one parliament, whereas we have eleven governments, not to mention the municipalities. Great Britain is a small country compared to ours, where parliament is constantly in session, and where infringements readily come to public attention. Canada, on the other hand, is a vast country and we are handicapped by the fact that infringements which may be known to the people in one part of the country, may be totally unknown to the people in the rest. Then, too, Great Britain has a homogeneous population, while in Canada we have a heterogeneous people. Furthermore, Great Britain has a tradition of civil liberties which goes back over a thousand years, while we are just starting out on the road of nationhood. Finally, it would be a mistake to think that in Great Britain they are opposed to the idea of a Bill of Rights. The contrary appears to be closer to the truth.

At the present time the government of Great Britain is actively assisting the United Nations Commission on Human Rights in the preparation of an International Covenant on Human Rights. In addition, a distinguished com-

*...will not be because of comprehensive legislation set up in
...Bill of Rights*

mittee of citizens of Great Britain under the chairmanship of Lord Sankey, the late Lord Chancellor, a few years ago, joined hands and prepared a monumental document in the form of a Declaration of the Rights of Man.

It may be objected by some that we do not need a Bill of Rights in Canada because it has been of doubtful value in the United States. Certainly it would be hard to find a responsible American who held this view. According to people competent to speak on the subject, the Bill of Rights has been one of the greatest single forces in uniting the American people and in the development of democracy and respect for human rights in that country.

This is what Mr. Justice Douglas of the Supreme Court of the United States has to say:

The Bill of Rights represents a great historic struggle to make men free. It is the cornerstone on which our cultural and spiritual values rest. It is a constant reminder to us that once we strike down the expression of ideas that we despise we have forged an instrument for the suppression of ideas that we cherish. We know that the constitutional safeguards of equal justice under the law are absolutely essential to the preservation of liberty. For history has shown that once persecution is unloosed on one minority, it spreads like a blight. We know that man is strong only when man is free; that man is free only when he has those inalienable rights proclaimed by our Declaration of Independence.

Here is how the noted scholar, Professor Zachariah Chaffee Jr. of Harvard University puts it:

More than any other part of the Constitution, the ten amendments which make up the Bill of Rights are the precious possession of private citizens. They came out of the people and were made directly for their benefit.

On the occasion of the 158th anniversary of the Bill of Rights, a New York Times editorial reported:

The Bill of Rights is as sacred and as meaningful to the mass of the American people today as it was 158 years ago—perhaps more so, for since its adoption there has been 158 years of struggle to preserve it in spirit and letter.

Usually this objection is put forward by people who are thinking of the status of the negro in the United States. They fail to consider that it would be almost impossible to find any responsible negro in that country who would propose the abolition of the Bill of Rights. The fault be it remembered in their case, is not with the Bill of Rights, but with the lack of adherence to the principles of the Bill of Rights. We hesitate to think what life might have been in the United States had there been no Bill of Rights. As the study of Mr. Osmond K. Fraenkel of the New York Bar on "The Supreme Court and Civil Liberties" demonstrates, it is hard to overemphasize the extent to which the Court has protected the Bill of Rights.

Another argument sometimes raised against a Bill of Rights is that it would tend to restrict rather than extend our liberties. We fail to see any real merit in this argument, because we feel it would be a simple thing for competent legal draftsmen to make clear that the Bill of Rights is not to be regarded as abridging any rights or freedoms presently existing. Certainly there is no evidence that the Bill of Rights has had the effect of restricting rather than extending civil liberties in the United States. Certainly also, Great Britain and the United States would not be supporting an International Covenant on Human Rights before the United Nations Commission on Human Rights if that were so.

As was done in the American Bill of Rights and has been done in the Covenant, a clause could be inserted to the effect that nothing in the Bill of

Rights is to be construed as limiting or derogating from any rights or freedoms otherwise recognized.

It may be objected that it is unnecessary to have a Bill of Rights in the Constitution, the protection can be provided by a federal statute. While it is true a federal statute would afford greater protection than at present exists, nevertheless the value of such a law cannot be compared with a constitutionally guaranteed Bill of Rights. For one, a federal statute would be limited in scope so that it could only cover those things within Dominion jurisdiction. In other words, it would leave the provinces free to do anything they decided in the realm of fundamental human rights within their powers under the British North American Act. For another, there would be nothing to prevent a succeeding government from suspending or repealing the federal Bill of Rights as long as it had a parliamentary majority.

In connection with this argument it might be well to recall the words Mr. Justice Douglas of the Supreme Court of the United States used three years ago:

James Madison, in championing the Bill of Rights, stated that "the prescription in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely that which possesses the highest prerogative of power". And so the Bill of Rights is not only a curb on all executive agencies, on the legislatures and on the courts. It is in its ultimate reach a check on a majority of the people—the source of all sovereignty—in favor of a minority.

We would not want to be understood as suggesting that all we have to do to adequately protect our civil liberties is to pass a Bill of Rights in the Constitution. It would be a mistake for anyone to assume one's rights and freedoms are made secure simply by the enactment of a Bill of Rights. It has always been true and we expect it always will be true that eternal vigilance on the part of every citizen, and respect for the rights of others, is the price of liberty.

The fact of the matter is that both need each other. The Bill of Rights needs the support of the people and the people in turn need the authority, standard and legal guarantees of the Bill of Rights.

As a distinguished jurist has said "It is not in the courts alone that the strength of our civil liberties is to be ascertained. The executive and legislative branches of government also have responsibilities for enforcement of the Bill of Rights. The administration of the voting booths, the habits of the police in law enforcement, the nature of the city's ordinances—these are all indices of the vitality of the Bill of Rights in the life of the community. So is the attitude of the community. For an indifferent community, like a misguided one, will surely breed disrespect for the standards embodied in the Bill of Rights."

In addition to a constitutional Bill of Rights, we believe that fundamental human rights would be more adequately protected in Canada if these steps were taken!

1. The Supreme Court Act should be amended to extend the jurisdiction of the Supreme Court of Canada, so that, the Court will have jurisdiction to deal with many cases involving civil liberties which now cannot come before it. Certainly such issues are of equal, if not greater importance than monetary matters. Moreover there would hardly be much point to having a Bill of Rights and find that there was no recourse by way of appeal in proper cases to the court of last resort.

2. A Federal Fair Employment Practices Act should be passed which would seek to put an end to discriminatory and unfair employment practices in federal industries and promote proper relationships between employers and employees. It would recognize, to use the words in the Fair Employment Practices Act proposed by the Liberal Party of Ontario, that "no employer shall discriminate

against any individual or group in respect of terms, conditions or privileges of employment, or discharge or refuse to employ any individual or group because of race, colour, creed, religion, ethnic or national origin or ancestry”.

They have such a law in New York State, and a New York Herald Tribune editorial writes of it as follows:

“Legislation against discrimination in employment is practical and successful. This is common knowledge in New York; the evidence is everywhere plain. What is our secret of success? First, there is determination firmly and simply expressed in law. Second, the commission gets results by ‘conference, conciliation and persuasion’. Third, our law has teeth. Up to now, the cease-and-desist sanctions of court order have never been sought, which is a tribute to the commission’s skillful and forehanded administration. The necessity for crackdown is avoided by developing a community atmosphere that is progressively favourable. We progress by conscious education; the whole air is co-operation instead of conflict. And this is the triumph of intelligent legislation, the proof that a broad and imperative aim can be harmoniously translated into happy result.

3. A Civil Rights division should be established as a branch of the Department of Justice, whose function it would be to investigate complaints and seek to protect the fundamental human rights of people in Canada.

4. When the Criminal Code is revised, special consideration should be given to defining and bringing together in one place, the specific rights which the citizen and an accused person may lay claim to under our criminal law.

III

We now propose to direct our attention to the third and final question suggested by the motion of your appointment, namely: What action, if any, can or should be taken to assure human rights and fundamental freedoms to all persons in Canada?

As for the Bill of Rights in the Constitution, history has been good enough to lend us a helping hand. The Dominion and Provincial Governments are now actively considering the revision of the Constitution. This is indeed a great and historic opportunity to bring our Constitution up to date and inscribe therein a Bill of Human Rights to which every person in Canada would be entitled.

We therefore urge that you recommend to the Government of Canada to take up, at an appropriate time, with the Provinces the task of incorporating a Bill of Rights in the Constitution.

We further urge that you recommend to the Parliament of Canada that the Supreme Court Act be amended to enlarge its jurisdiction in cases involving fundamental human rights and freedoms.

We also urge that you recommend to the Parliament of Canada that it enact a Federal Fair Employment Practices Act.

Finally we urge that you recommend to the Government of Canada that it establish a Civil Rights division as a branch of the Department of Justice.

In subscribing to the United Nations Universal Declaration of Human Rights, Canada undertook to promote by progressive measures, universal and effective recognition and observance of human rights and fundamental freedoms in its territory. We feel that Canada would be setting an example for the rest of the world if it now proceeded to implement this undertaking. We have accepted these rights and freedoms as moral obligations. Having done this, it follows logically and is no more than right that we should accept them as legal obligations as well. It is no answer to say let us wait until Canada and

the other United Nations write and conclude an International Covenant on Human Rights. From past experience we know that such international agreements usually take a long time to be completed, if they ever are consummated, and present indications are this is likely to be the case with the Covenant. Besides, before a Covenant could be put into legal effect in Canada, the question of obtaining the consent of the provinces would inevitably arise.

Canada is now emerging into full maturity as a nation. We have recently witnessed the establishment of two freedom-loving nations, India and Israel, both of which saw fit to include a Bill of Rights in their Constitution. By enacting our own Bill of Rights, Canada would not only be joining the distinguished company of these countries, but of at least 30 other nations as well.

Above all, let us strive to make Canada safe for both democracy and differences, where the answer to error is not terror; where democracy is achieved without vulgarity and excellence without arrogance; where the majority is without tyranny, the minority without fear, and all people have hope.

We accordingly look to you for a report which will be in keeping with the fine tradition of Canadian statesmanship, and which will be an inspiration, not only to the Canadian people, but to the people in the rest of the world, and a heritage to future generations of Canadians.

The CHAIRMAN: That is splendid. I believe there will be some questions now.

Hon. Mr. KINLEY: Mr. Himel, on page 15 of your brief you say, "We therefore urge that you recommend to the government of Canada to take up, at an appropriate time, with the provinces the task of incorporating a Bill of Rights in the Constitution. What significance do you put in that term "appropriate time"?"

Mr. HIMEL: It is appreciated, senator, that the federal government may have a special procedure in mind and that it prefers to take up these matters in a certain order. I do not think that the people in Canada who are interested in the protection of human rights would want the government to take it up except in the way in which the government deems best. What we are primarily concerned about is that they take it up at some reasonable time, not too far hence. We have in mind that the government may want to dispose of the question of how to amend the Constitution before they go on to decide what amendments should be made, and we do not feel that we should ask you to recommend to the government that any specific time be set when the government should take it up. We are interested in the recommendation that they should take it up at an appropriate time. Do I make my answer clear?

Hon. Mr. KINLEY: Yes. The amending of the Constitution is going to be a most difficult matter, and I am just wondering whether the fundamental part of the amending of the Constitution should not have first consideration and not be ditched, as it were, because of something they might have difficulty with. In one sense the term "appropriate time" might be to deal with one thing at a time. As I say, the amending of the Constitution is going to be very difficult and I am glad to see this term "appropriate time" in here. I like that.

Now, you regard the right to work as fundamental. I guess everybody regards that as fundamental. I think it is not only fundamental but it is salutary and is a virtue, but can you say something about the right to work? Do you regard it as the right of man to work or an obligation on somebody's part to give man work?

Mr. HIMEL: I may say, Senator Kinley, that we had hoped to crystallize that question in our statement of economic and social human rights. We feel that in dealing with this question of the right to work there is first required a specific legislation rather than general statements, because if you are going to put those things in a Bill of Rights which you are going to ask a court to

enforce, then you must at the same time put in those things which a court can enforce. In my opinion it is not possible to ask a court to enforce a general right to work, but, on the other hand, we know that freedom cannot exist without employment. As one man said yesterday, "Democracy might be defined as freedom plus groceries". It would not be wise to overlook the important place that economic and social rights have in the scheme of things. It is our submission that it does not belong, however, in the Constitution but that it belongs as part of our statute law. Therefore it is a matter for the government to consider appropriate measures from time to time to deal with the question. But we certainly do not feel you can have freedom without people being economically secure, and therefore in any-all-inclusive study of the subject of civil rights, one cannot ignore the subject of these social and economic rights. Does that answer your question?

Hon. Mr. KINLEY: Well, there is more to it than that but I am glad to hear what you have to say.

Hon. Mr. REID: In preparing your brief I suppose you have given some study to the life of the individual in the United States as compared to the life of the individual in Canada. If so, I am wondering whether in your opinion an individual either in Great Britain, with its Magna Charta, or in the United States, with its Bill of Rights, is enjoying a life of greater freedom from any of the fears you have mentioned here than the individual in Canada. Coming as I do from Great Britain I may have something to say about that. I think the people from Great Britain have been hamstrung for the last 20 years. I suppose you have made some study of the United States. I have too.

Mr. HIMEL: Not having lived there I am not in a position to say which country has the greatest amount of freedom. However, I think perhaps that the question is not fairly put because we are not so much interested in how much freedom may be enjoyed by an individual in the United States or in Great Britain or in this country. The task we have is to extend freedom as much as we can here, and to do as good a job as we can in this country. If a Bill of Rights will do a better job, then I say that is the case for the Bill of Rights. It is not that we may be as good as the United States with their Bill of Rights, or as Great Britain where they do not have one. I think the case must be that the Bill of Rights must stand on its own feet if it can do a better job.

The CHAIRMAN: Is it not a fact, too, that the people in the United States might be a great deal worse off than some of us think they are now, if they did not have a Bill of Rights?

Mr. HIMEL: Yes.

Hon. Mr. KINLEY: They have a big task with 140,000,00 people.

Hon. Mr. REID: It is very difficult for people in one country to place their minds and thoughts under the Bill of Rights of another country, because each country and race of people interpret their own rights and their own way of life according to the conditions in that country. You and I might look upon the people of Great Britain as having lost many freedoms since I left that land, and they have, due to the fact that they are losing the sense of rebellion. I do not mean by that the overthrowing of governments but I mean rebelling against the loss of freedom. Therefore, I cannot see how you can put all these freedoms together in words and make them applicable in each country. If anyone living in a foreign country happened to come across this document he might think that we were a very backward people, without any freedoms. Suppose, for instance, someone in Czechoslovakia or in a South American country happened to see this document in which you are advocating a lot of freedoms, he might say, "Those Canadians cannot have many freedoms left."

Mr. HIMEL: I suppose, sir, that that argument was available when the Declaration of Human Rights was being drafted. After all, why does Great Britain have to participate in the Declaration when there is adequate protection and freedom in that country?

Hon. Mr. REID: I think we are far freer in Canada than the people in Britain are. We would not tolerate in this country today what the British people are tolerating. I say that in all sincerity. I am surprised at what the people of Great Britain are taking. We look upon the British people as free people, but as a Canadian I say that no people in the world have greater freedom than we are allowed in this country. Of course, that is not to say that there is no room for improvement; it might be possible for us to have even more freedom in the future than we have had in the past.

Mr. HIMEL: I may say, senator, that we are not trying to indicate in any way that there is not a large measure of freedom in Canada. What we are trying to indicate is that there is a definite, clear case for further protection. I submit that the case is there and that it is virtually unanswerable, unless you are prepared to say that such infringements—what we call infringements—are not infringements.

Hon. Mr. REID: I think you will serve a very useful purpose by what you are doing if you can arouse the people of Canada to a danger, which I think is imminent. During the war the government was given wide powers, naturally, and I think that the wartime psychology in that respect still remains with the people, and that they are ready to accept anything from any bureaucrats at Ottawa, and from any government, without raising a protest. I am a liberal at heart and in spirit, and I am a democrat, and when I see the apathy of the people of Canada I can only say that they seem to be willing to accept anything. So, I repeat, if you can arouse our people from this apathy you will accomplish a great purpose.

Mr. HIMEL: That is precisely what we hope to do, sir. I may say, sir, that the apathy is all the more dangerous because of the view, which we frequently hear expressed, that the final defence of the people rests in its ability to turn a government out of office if it passes laws that the people do not like. It is hard to analyse that view. The federal government is elected to office for five years and the provincial governments for four years. It is rare that you can make an infringement on human rights the issue of an election; in fact, it is almost impossible to do so, because usually the infringement affects not very many people, perhaps only a few individuals or a single individual.

The CHAIRMAN: And usually an unpopular individual, at that.

Mr. HIMEL: Quite so. So to suggest that an infringement on human rights can be made the issue in an election campaign and the basis for the defeat of a government is to dream. Moreover, in a period of four or five years a government, as we have seen in other countries, can do such damage to the public will to protest and fight back that the people may be terrorized into supporting a government out of fear of the consequences. Now, we have never seen that in Canada, but we must admit that it is possible, and in my humble submission we should provide for some checks, in so far as it is humanly possible to do so, checks on the power of governments and courts and individuals to take away precious rights. If the courts are independent we can have some faith that they will be a check—if not an actual check, a time check, a check of reasoning—on the power of authorities to take away rights.

Hon. Mr. KINLEY: Do you differentiate between constitutional rights and fundamental rights?

Mr. HIMEL: No, sir, I did not intend to.

Hon. Mr. KINLEY: There is a difference, is there not?

The CHAIRMAN: Oh, yes.

Hon. Mr. KINLEY: You refer to the two languages in Canada and to separate schools as fundamental rights. They are really constitutional rights.

Mr. HIMEL: That is correct.

Hon. Mr. KINLEY: They would not be considered fundamental rights in the United States, for instance. They are constitutional or treaty rights that have been established in Canada.

Mr. HIMEL: Quite so.

Hon. Mr. KINLEY: So when you include them as part of our fundamental rights, you are really overstretching the point a little, are you not?

The CHAIRMAN: They are part of our constitutional rights.

Mr. HIMEL: I might say, sir that the right to use two languages is really a branch of the right of freedom of speech.

Hon. Mr. KINLEY: But it is a restricted freedom of speech.

Mr. HIMEL: So far as language is concerned in the courts and so forth, yes, but in fact it is an extension of the general policy which is followed in a great many other countries, where one language only is allowed to be used in the courts and in parliament.

Hon. Mr. REID: And in certain provinces of Canada only one language is official or regarded as such. For instance, in British Columbia the people look upon English as the language.

Hon. Mr. KINLEY: A fundamental right is one which people regard as something to which they are fundamentally entitled, because of its virtue, but a constitutional or treaty right is something that arises by reason of a settlement or arrangement. Our constitution may provide for certain rights that are not given in other countries. When we deal with fundamental rights we should be careful to deal with those that are really fundamental.

The CHAIRMAN: I think it is time that we passed on, for we have two other delegations here this morning.

Hon. Mr. REID: Just one more question. I notice that the right to join a trade union is mentioned, and I should like to know—I speak as a trade unionist—why when all the fields of freedom were being covered the right not to join a union was omitted. I think a man has a right to join or not to join a union.

Hon. Mr. KINLEY: One right implies the other, does it not?

Hon. Mr. REID: No. There is a difference.

Hon. Mr. KINLEY: I have a right to go to church, but that implies my right to remain away from church.

Hon. Mr. REID: There is a difference between the rights that I am speaking of. We have got to the point now where, no matter what a man does—whether he is a lawyer or a doctor or a bricklayer or a machinist—he must belong to a union or organization in order to earn his livelihood. Now, a man might say, “Though other people wish to join a union, I as an individual do not believe in unions and I do not want to join one.” If you are going to cover the whole gamut of individual freedoms, that is one which should not be overlooked. I repeat that I speak as a trade unionist.

Mr. HIMEL: I might say, Senator Reid, that we relied on the language of the Declaration and of the motion, because we felt that those questions had been explored. We are interested in the principle, and the wording is something that can be left to the legal and literary experts. We do not want to get into an argument on the language, because every person would like to write his own Bill of Rights.

Hon. Mr. KINLEY: But you did get into it. You claimed the right to use two languages as a fundamental right.

The CHAIRMAN: We must pass on, for we have other delegations here. To Mr. Himel, Dr. Wallace and all those associated with them in the presentation of this very comprehensive and excellent brief, I wish to express our sincere thanks. We recognize that you have given us a great deal of thought and we compliment you for the public spirit which you have devoted to this work. Your contribution has been of great assistance, and I believe it will be of value to us when we come to make our report. I speak on behalf of all our members when I say thank you.

Mr. HIMEL: Thank you, Senator Roebuck.

The CHAIRMAN: I wish to make one comment on the statement of Senator Reid, about losing the sense of rebellion. I like that observation and I realize the meaning he attaches to the word rebellion; it is resistance.

Hon. Mr. REID: I do not mean the overthrow of the government. I mean rebellion against a bureaucratic government by which we will, bit by bit, be enslaved before we know it.

The CHAIRMAN: It is a fanatic flash we sometimes see in people when they are abused or when their rights are denied them. As long as we retain that sense, we are not so badly off.

I should perhaps not be reminiscing, but I just recall an incident when I was in office in Toronto, when a delegation of unemployed came to see me. They had got into trouble with the police over some meeting they had held the night before and came up to assure me that they were the most law-abiding people in the world. They were certainly in bad shape economically, and one of them did admit, but with an apology, that some fellow had so far lost his head that he threw a chair through a window, but they apologized for it. I said, "Well, perhaps he shouldn't have done that", but I felt that the liberties and freedom—the economic welfare—of our people was not entirely lost when somebody still retained the spirit to throw a chair through a window. I do not know whether I was misunderstood in that regard.

Hon. Mr. REID: Remember the Holy Writ tells us the temple at one time was torn apart.

The CHAIRMAN: Yes, and let us not forget that the reform bill, of England, passed in 1832 was largely the result of 100,000 working men marching on Birmingham in a special demonstration. But, perhaps this is not quite apropos to what we are talking about today.

I do wish to make a little explanation arising out of the last brief. The resolution which we have before us, the detail features of which was copied from the United Nations, refers practically entirely to political freedom rather than to economic rights and freedoms. We are not attempting, as I understand it, to deal with the economic rights of the individual. One thing at a time; we have enough on our hands with political freedoms, rather than taking on such subjects as the rights involved in the right of access of the individual to the natural resources of his country, and so forth; other fields involving large financial interests will require a great deal of thought. They involve the whole field of political economy; and, as Mr. Himel said, matters which are not so much a subject for constitutional amendments or of a bill of rights, as they are for specific acts of the various legislatures. They require economic wisdom as a guide in our system of taxation, and various other matters, in order to bring out individual economic freedom. We are not in a position to deal with that subject in this committee.

Now, gentlemen, we have, as I said, two delegations before us.

Hon. Mr. REID: These delegations get better looking all the time.

The CHAIRMAN: We have with us the National Council of Women whom, by chance, I propose to call on first, and then we have also the National Council of Jewish Women of Canada. I am sure you will be very pleased to hear from both of them.

The National Council of Women of Canada will be represented by three ladies; first, Mrs. Robert Dorman, the vice-president of the association; and, Mrs. G. D. Finlayson, the corresponding secretary of the council. As a third member we have Mrs. Clark Hamilton, chairman of the Standing Committee on Economics and Taxation, for the National Council of Women.

I understand that Mrs. Dorman is prepared to present to us a brief, copies of which have been distributed.

Mrs. ROBERT DORMAN: Mr. Chairman and honourable senators, before presenting this brief of the National Council of Women may I offer my congratulations to the Association of Civil Liberties for the excellent and welcome details contained in the brief to which we have just listened.

I should, perhaps, first of all give you a word of explanation as to what the National Council of Women is. The National Council of Women is a body incorporated by act of parliament. We have been in existence for fifty-seven years, and have twenty-two women's national organizations affiliated with us. We have local councils of women representing great numbers of women from Halifax right across to Victoria. The brief which you have before you, as you will see, deals entirely with the problems, as we see them, facing the women of Canada today. I have the honour of presenting this brief to you, for your consideration:—

In response to an invitation from the special Senate Committee on Human Rights and Fundamental Freedoms, the National Council of Women of Canada presents the following Brief for consideration.

In 1945 the National Council of Women of Canada called two conferences of women's national organizations, to consider the position and rights of women in Canada, what discriminations still operated against them and what can be done to correct them. At that time women in homes and in jobs, in rural and urban life, were considered. We are not, in this brief, making any special representations for rural women because we assume that the Federated Women's Institutes and the Farm Forums will speak for them. Also we assume that the Teachers' Federations and Educational Associations will present the case for the right to education.

Realizing the human rights fall into main classifications:

1. The civil and political human rights.
2. The social and economic human rights,

we wish to point out that the former can properly be incorporated into the Constitution of Canada, since they are fundamental principles. On the other hand, the second group requires legislation of a flexible nature and detailed character to make them effective.

I. Civil and Political Human Rights.

In this category we would include freedom of speech and discussion, and of press, radio and other means of expression; freedom of law-abiding assembly and of lawful association; freedom of religion; all essential to the effective operation of democracy.

We further believe that it is of the utmost importance that our Constitution explicitly affirm that these fundamental rights are the equal possession of every citizen without discrimination because of race, religion, language or sex.

II. Social and Economic Human Rights.

We realize that these rights, covered in Articles 22-28 of the Universal Declaration of Human Rights, cannot be included in a national Constitution. However, the National Council of Women has, for many years, approved and adopted the principles set forth in these articles regarding the right to employment and the rate for the job, regardless of sex, race or marital status; social security and health services based on contributory plans where possible; the right of all citizens to education suitable to their needs and abilities and the objective of an adequate standard of living.

The National Council of Women believes that a sound, sanitary home with adequate space for the family it houses is a basic factor in an adequate standard of living and a human right; that women and children suffer the most from crowded, or insanitary housing. So a year ago we asked the Dominion Government that provision, financial and administrative, be set up for the co-ordination and direction of housing activities at the three levels of government, Dominion, Provincial and Municipal.

I would like to ask Mrs. Finlayson to add a word here in connection with this particular matter.

The CHAIRMAN: That is perfectly all right. Mrs. Finlayson?

Mrs. G. D. FINLAYSON: I wanted to say that we realize that a year ago the Honourable Mr. Winters introduced legislation along these very lines, and we hope that that will provide the housing which we had in mind, at a range of prices suited to a group of people that have not been able hitherto to pay for their housing. We advocate that people should be encouraged to pay their own way; that help from the Government should be in the saving of expense and the providing of a price range which they can afford to pay, which they will provide for themselves. Of course that involves, among other things, a reasonable level of employment, so that they may earn an adequate living for this purpose.

The CHAIRMAN: Thank you.

Mrs. DORMAN: We have not only stated our belief in these principles, but have worked toward their implementation by trying to create public opinion favouring them, and by specific requests that instances of discrimination be corrected. The contribution of women to our nation during wartime proved beyond a doubt that women are capable of assuming their full share of responsibility. In peacetime also their contribution is made in many ways. For good homes and well brought-up children, the contribution of women is at least equal to that of men, yet our Government in Income Tax Acts regards a husband's income as solely his without consideration in money for the services of his wife within the home and her contribution to the family and the State in bearing and raising children, which is foremost in the building of any nation. It is our belief that woman's function of managing her household, raising and caring for children, fully equals her husband's work outside the home of providing an income to maintain it; marriage is a partnership. Therefore, (1) We contend that a wife's right to one-half of the earnings of her husband should be given legal support and recognition and that the Income Tax Act should be amended to provide for the choice by husband and wife of filing either a joint or a separate return, even though the wife may not be in possession of any personal income. (2) To be in logical agreement with the above, we also ask that only one-half the value of any gift from a husband to his wife (above the present limit)—property or otherwise—be subject to gift tax.

The Succession Duty Act also regards all the family assets, accumulated during the marriage partnership to have been the property of the deceased husband, without consideration in money of the widow's contribution in service in building that estate. We think that one-half of an estate up to a certain

amount, passing from a deceased husband to his widow be regarded as rightfully hers and be not, therefore, subject to succession duty.

The CHAIRMAN: What is the picture now? In Ontario there is no succession duty up to \$25,000. Maybe that is the case in other provinces.

Hon. Mr. BAIRD: Fifty in Newfoundland, is it not?

Hon. Mr. GLADSTONE: Fifty in the Dominion.

The CHAIRMAN: And 25 per cent in the provinces?

Hon. Mr. KINLEY: If it goes to a direct relative.

The CHAIRMAN: We have recognized the principle, Mrs. Dorman, in our law of estates up to a certain point, going to widows, not bearing succession duties.

Mrs. DORMAN: Would you like Mrs. Hamilton to speak to that? She is very well qualified, and perhaps can answer any questions you may like to ask her.

Mrs. CLARK HAMILTON: I may say that in the province of Ontario that \$25,000 exemption applies to anyone, even to a wife's daughter-in-law,—which does not seem reasonable to us—and also, if an estate exceeds \$25,000, then the taxation is on the whole estate.

The CHAIRMAN: That is true.

Mrs. HAMILTON: And we feel that the wife is regarded as her husband's dependent, and that these exemptions are allowed on compassionate grounds, not as her right due to her contribution to the building of the estate and her contribution to the state in the bearing and raising of children. Under income tax law a woman is regarded as her husband's dependent unless she has a personal income of her own.

Hon. Mr. KINLEY: Not exactly as a dependent. The children are his dependents.

Mrs. HAMILTON: I would like to mention that last summer I wrote to our Canadian Embassy in Washington requesting information along these lines as to what prevails in the United States, and we find that the things we are asking for here now exist there. As you probably know, income for taxation purposes is divided as half earned by the husband and half earned by the wife. Also the husband or spouse is permitted to make gifts to his or her spouse and one-half is not subject to gift tax; also the husband may leave to his wife one-half of his estate totally exempt from succession duty. We feel that this recognizes the wife's contribution and her general place in the scheme of things in the nation.

The CHAIRMAN: Thank you, Mrs. Hamilton.

Mrs. DORMAN: The law under the Devolution of Estates Act permits a man to will away from his wife, if he wishes, the whole of his estate except for her dower right of one-third of real estate. This dower right in real estate was enacted many years ago when wealth consisted almost entirely of real property. The reverse is the case today and the law should be examined in the light of present conditions. We contend a wife should be protected against the caprice of a husband in willing away from her, her rightful due.

At present a man's children may earn up to \$500 a year, indeed he may hire his own children and pay them up to \$500 a year, without affecting his exemption for income tax, while a wife may earn only \$250 without reducing her husband's exemption for income tax. We regard this as unfair.

We think that there has been discrimination against women in making appointments to many public bodies. Last year the NCW asked the Prime Minister that more women be appointed to the Senate, seeing that about half the population of Canada is female; we also asked that appointments to the Senate should be primarily for service to the country, rather than to a political party. Since women are about 50 per cent of the adult population, we regard it

as our right that we should have women on the Boards that control and direct many public services, and we have asked for appointment of women to the Civil Service Commission, the Unemployment Insurance Commission, as Canadian delegates to the various Councils, Agencies, Committees of United Nations, and to many other bodies such as the National Film Board, the Board of Directors of CBC.

The activities of the NCW are much wider than this statement would indicate but a complete review was not possible in the time available. Also it was impossible to consult our executive members and so this brief is confined to those matters on which the Council has already defined its stand.

In conclusion, we wish to state that constitutions alone cannot preserve essential freedoms. It is necessary that there be an informed, vigilant public opinion. We would suggest in this regard, that in our schools and all naturalization proceedings, the existence of a Bill of Rights in the Constitution would be valuable in teaching the implications of Canadian citizenship, its duties and responsibilities as well as privileges. An explanation of the Bill of Rights would give a sense of security to our many minorities and a sense of pride in our free Canadian institutions.

The CHAIRMAN: Thank you, Mrs. Dorman. I think perhaps it should be pointed out that a number of these matters, Mrs. Dorman, are purely provincial, and we might have some difficulty in including them in a report from a Senate committee dealing with dominion matters. Take, for instance, succession duties. We charge them in the dominion field as well as in the provincial field, and we can certainly apply your thoughts with regard to the dominion succession duties; but what business we have to interfere with provincial matters is another thing.

Hon. Mr. KINLEY: All these presentations are most splendid, but it appears to me that we do stick religiously to material matters. In our fundamental freedoms and in our idea to preserve freedom if we said something about, "Remember the Sabbath Day, to keep it holy" and we set ourselves forward to saying that we believe in the preservation of the Sabbath, we might be doing something useful. I think that in putting first things first, that the spiritual freedoms of the country are of great importance.

The CHAIRMAN: I think Mr. Himel had something about the right to leisure, did you not, Mr. Himel? I think you said something about that, and it would include the Sabbath.

Mr. HIMEL: I believe there is something in the Declaration of Human Rights on that, Mr. Chairman. Again it is one of those things which might be classed as a social human right, and that involves the question of "Where do you put them?" Do you deal with them in the Bill of Rights or do you deal with them by separate legislation? The consensus of opinion seems to be that you should deal with them by separate legislation.

The CHAIRMAN: What is your thought about that, Mrs. Dorman?

Mrs. DORMAN: I do quite appreciate the fact that we should express the spiritual need of the world today and the sense of freedom for religious worship. We feel all these things should be included in any Bill of Rights. What we have attempted to do in the brief time given to us has been to prepare a brief resume of what we consider some of the rights of women to be.

Hon. Mr. KINLEY: I suppose you agree that proper discipline is an element of freedom?

Mrs. DORMAN: Yes. I would say that in that case we would try to differentiate between liberty and licence. Discipline is necessary in our world today.

Hon. Mr. KINLEY: It is difficult to give people freedom unless they are the proper people to use it. In other words, children must be brought up right. You must be able to give freedom to people who are able to use it.

The CHAIRMAN: And who do not abuse it.

Hon. Mr. KINLEY: Yes.

The CHAIRMAN: And who would not use their freedom to curtail the freedom of others.

Hon. Mr. KINLEY: Yes.

Mrs. DORMAN: That would be covered in the idea of fundamental responsibilities taught to children as they go along through life both in the home and outside of the home.

Hon. Mr. REID: In studying this whole matter it seems to me that there are certain restraints imposed on individuals that can never be written into any Constitution. You can go from one locality to the other and you will find that each has certain restrictions, owing to the moral outlook of each particular locality. These things are not written in the statutes. For instance, in speaking about the district and the country from which I came, it was well known there that if a young man was escorting a young lady and she discovered that there was tuberculosis in his family, the marriage would be called off. There was no law against it, but no young woman would marry a man whose family had a case of tuberculosis in it, and likewise no young man would marry a girl whose family had a case of tuberculosis. In each community there are certain things you can do and cannot do. I think what you say here about the income tax of a married woman is very well put. Have you given any thought as to whether you would apply it to all married women? You say here, "It is our belief that woman's function of managing her household, raising and caring for children, fully equals her husband's work outside the home of providing an income to maintain it; marriage is a partnership."

Mrs. DORMAN: Perhaps Mrs. Hamilton will answer your question.

Mrs. HAMILTON: I would apply it to all married women, particularly so in these days because most women, in order to marry, give up remunerative positions in the business world.

Hon. Mr. BAIRD: Do you say that most women do?

Mrs. HAMILTON: Yes, these days they do.

Hon. Mr. REID: Have you ever known a women who would not do that? I have not.

Some Hon. SENATORS: Oh, oh.

Mrs. HAMILTON: Some women continue to work after their marriage until they are forced to give it up when they start to raise a family. I think that is in evidence more today than ever before, and I think that most husbands who can provide the family income wish their women to remain at home and look after the household and make it possible for them to go out and bring in the income. I feel that one function is just as important as the other, and should be recognized as such.

Hon. Mr. BAIRD: Do you consider that if a woman had a sizable income and the husband did not, that she should share that equally with her husband?

Mrs. HAMILTON: Yes, I do.

Hon. Mr. BAIRD: That is a very happy thought.

Some Hon. SENATORS: Oh, oh.

Mrs. HAMILTON: I think that the family should be regarded as a unit and that their income should be regarded in that light, and that for income tax purposes it should be divided. If they wish to divide it in the United States they may. They are permitted to either file separate or joint returns. They may choose whichever is to their advantage.

Hon. Mr. REID: They are at least getting an even break.

Mrs. DORMAN: Our contribution has been a short one.

The CHAIRMAN: It has been short, but it was comprehensive, and we thank you for it. This is the first presentation that the committee has had from a women's organization, and I can assure you that it will be carefully considered by us.

Hon. Mr. REID: We are grateful to them and hope they will come again.

The CHAIRMAN: Now, gentlemen, the last delegation from whom we are to hear today is the National Council of Jewish Women of Canada. It is represented by Mrs. E. R. Sugarman, the Council's National Chairman of International Affairs, who is the Chairman of the delegation; Mrs. H. Lorie, Acting Chairman of Education and Social Action; Mrs. Joseph Shmelzer, Honorary Vice-President; Mrs. Maurice Freedman, Secretary, Study Group on International Affairs; Mrs. Gordon Lauterman, Executive Advisory Council member; Mrs. Michael Greenberg, Chairman of International Affairs Section of the organization, and Mrs. Morris Cohen, President of the Ottawa Section of the organization. I understand that Mrs. Sugarman is to speak for the delegation, but we would be glad if all the ladies associated with her would come to the front of the room and be seated.

Mrs. E. R. SUGARMAN: Mr. Chairman and honourable members of the committee, our brief will be short. In order to save time I will not repeat the points made by the previous delegation, although they do form an important basis of our thought. Furthermore, we as an organization are very familiar with the Association for Civil Liberties, of Toronto, which has done such magnificent work in planning for this day and in other matters, and we have nationally endorsed the brief of that association. But so that you will not have the same thoughts repeated by our group, we are confining our brief to points on which we take a somewhat different attitude or have some further idea to inject.

The CHAIRMAN: Or points in which you are especially interested.

Mrs. SUGARMAN: Yes, Mr. Chairman.

This brief is presented by the National Council of Jewish Women of Canada. It is an organization which has had a history in Canada for over fifty years. Its membership consists of almost 5,000 Jewish women in all walks of life, so that it is truly representative of the Jewish women of Canada.

Throughout the history of our organization, it has been a tradition for us to take a very active and constant interest in human rights and in the development of good citizenship in Canada. We, therefore, particularly welcome the fact that the Senate has established this Committee and we sincerely hope that from your deliberations will come tangible results which will strengthen and promote greater respect for those rights which every Canadian should enjoy.

It has always been the policy of our organization to consider that there are certain human rights which every person should enjoy, which are so fundamental that they should be beyond the power of any government to take away.

Among such human rights we would include:

1. The right to life, liberty and the security of person.
2. The right to freedom from cruel, inhuman or degrading treatment or punishment.
3. The right to equality before the law and to equal protection of the law without discrimination.
4. The right to freedom from discrimination in employment, in education, in public places, and to equal pay for equal work.
5. The right to freedom from arbitrary arrest, detention or exile.

I may say that I feel very keenly about this. For twenty-seven years I lived in British Columbia, and the exile of people whom I considered Canadian

citizens was a matter of great pain to me. I am happy that the situation has been rectified, and I hope that no one in Canada will have to live through that kind of situation again.

6. The right to habeas corpus and reasonable bail.
7. The right to a fair and public hearing, and representation by counsel.
8. The right to be presumed innocent until proven guilty according to law.
9. The right to freedom from arbitrary interference with one's privacy, family, home or correspondence.
10. The right to recognition as a person before the law, and that men and women should have equal rights as to marriage, during marriage, and at its dissolution.
11. The right to own property and not be arbitrarily deprived of it.
12. The right to freedom of thought, conscience and religion.
13. The right to freedom of opinion and expression.
14. The right to freedom of peaceful assembly and association.
15. The right to take part in the government of the country directly or through freely chosen representatives elected by secret vote under a system of universal and equal suffrage at periodic and genuine elections.
16. The right to enjoy all the rights and freedoms above set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

To illustrate how basic these human rights are we need only mention that they constitute in the main, the rights which make up the United Nations Universal Declaration of Human Rights. In other words, they are the rights which 48 nations, including Canada, representing the widest possible difference in race, creed, colour, and tradition, unanimously agreed should be the property and possession of every human being.

It may be said that human rights are adequately protected in Canada at the present time. We would beg to disagree. In support of this opinion we might say that we have study groups in fourteen cities across Canada and the reports which our National Office has received from these study groups warrant the conclusion that there is a real need for greater guarantees and stronger protection of the human rights of the individual in Canada than at present exists.

It is appreciated that we enjoy a large measure of human rights and fundamental freedoms in this country. It is recognized, however, that a country, like a person, which is static, tends to decline. As we are all interested in the growth and development of this wonderful country of ours, it becomes a matter of vital importance to each of us to see that the human rights and fundamental freedoms of every individual, be he small or great, irrespective of his race or the colour of his skin, regardless of the religious beliefs he may hold, should be respected.

Democracy in Canada can only survive as long as these human rights and fundamental freedoms are observed. One could say of them that they are a yardstick by which the happiness of our citizens can, in a large measure, be gauged. They form a standard for the evaluation of Canadian democracy. It is for these reasons that we are so vitally interested in the progress of human rights and fundamental freedoms in Canada.

We do not feel it would be difficult to list and detail an alarming number of cases where the human rights and fundamental freedoms of individual Canadians and groups have been infringed in recent years. We do not feel any good purpose would be served in dealing with these at this time. Many of these cases are well known to you and offend such basic principles as the right of freedom

from arbitrary arrest and exile, freedom of religion, freedom of the press, freedom of speech, freedom of association, the right of freedom from discrimination on account of race, sex, colour or creed.

In our judgment, therefore, greater guarantees are required than those which at present exist, to safeguard the human rights and fundamental freedoms of our people. We submit that one of the best safeguards that can be provided would be to incorporate a Bill of Human Rights into the Canadian Constitution. We feel that now, when constitutional changes are being considered by the Dominion and Provincial Governments, that it is an historic and appropriate hour to write a Bill of Human Rights into the British North America Act.

In our humble opinion there are many advantages to having such a Bill of Rights. The first, that it is no more than just and proper that the individual citizen, regardless of where he may live in Canada should feel secure in the fact that he has the protection of the Courts in respect to these rights and freedoms.

A second advantage is that at the present time many of these rights and freedoms are implicit in our law and exist by inference. How much more desirable would it be that these rights and freedoms should be stated explicitly and be known to everyone? Not only would this have great educational value in the teaching of respect for human rights and fundamental freedoms upon our children but as well it would have a tremendous influence in similarly educating Canadian parents and particularly new Canadians.

A third advantage would be that a Bill of Rights would have the effect of consolidating a number of rights and freedoms of our citizens which are explicit at the present time but which are to be found scattered in a multiplicity of statutes and court decisions.

A fourth point is that in recent years Canada has enacted a New Canadian Citizenship Act. Under this act a naturalization certificate is conferred on a new citizen which states that a naturalized citizen is entitled to all the rights, powers and privileges to which a natural born Canadian citizen is entitled. Nowhere is it made clear just exactly what are the rights, powers and privileges to which a natural born Canadian citizen is entitled. Here we believe that a Bill of Rights would serve a most useful purpose.

The CHAIRMAN: Is that in the certificate?

Mrs. SUGARMAN: Yes.

The CHAIRMAN: That is a most interesting fact.

Mrs. SUGARMAN: Another consideration is that it is time that the status of women in Canada was clarified. Too often women in Canada are denied equal rights with men. We believe that the principle of equal rights for women should be recognized as part of our fundamental law, so that the same rights for women will prevail from the Atlantic to the Pacific.

A sixth factor is that Canada is a country in which there is a divided jurisdiction between the Federal Government and the Provincial Governments. Canada is also a heterogeneous country and made up of people from many races and different backgrounds. At the present time these conditions tend to promote diversity in the field of human rights and fundamental freedoms, a field in which uniformity is most desirable. A Bill of Rights would do much to bring about such uniformity, particularly now that we have the Supreme Court in Canada as the court of last resort.

I have now the same argument as presented by Mr. Himel with regard to Great Britain, a country which has a tradition of civil liberties going back over many years, whereas we are only now emerging to full maturity.

The CHAIRMAN: You are going to read that paragraph, are you not?

Mrs. SUGARMAN: In order to save time I was going to omit it.

The CHAIRMAN: Go ahead and read it.

Mrs. SUGARMAN: There are those who argue against a Bill of Rights on the ground that they do not have one in Great Britain. It must be remembered,

however, that Britain is not a country in which there is such divided jurisdiction as we have in Canada. There they only have one parliament, whereas we have eleven legislatures, sometimes sitting at the one time and making different sounds. In Britain too, they have a homogeneous population, whereas we have a heterogeneous population. Great Britain is a small country compared to ours, where infringements come to public attention quickly. We on the other hand, are handicapped in this respect by distance. Further it must be remembered that Great Britain has a tradition of Civil Liberties going back over 1,000 years, whereas we are only now merging into full maturity as a nation.

It is sometimes contended against a Bill of Rights that it has been a failure in the United States. Certainly it would be hard to find a responsible citizen of the United States who held this view. Scholars who have studied this subject in the United States have come to the conclusion that the Bill of Rights has possibly been the greatest single force in unifying the American people and in the development of democracy in that country. The critics who hold to this view no doubt have in mind the plight of the Negro people in the United States. We seriously doubt if there is any responsible Negro in that country who would advocate the repeal of the Bill of Rights.

Another criticism that is sometimes heard is that a Bill of Rights would tend to abridge our human rights and fundamental freedoms rather than extend them. We fail to see any real merit in this argument, because we feel it would be a simple thing for competent legal draftsmen to make clear that the Bill of Rights is not to be considered as abridging any rights or freedoms presently existing. It may be of interest to recall that a similar argument was raised many years ago in connection with the codification of the Criminal Law of Canada. However, time and experience have proven that we would not want to go back to the old system which prevailed before the Criminal Code was enacted.

In addition to the Bill of Rights there are several other things that might well be done to strengthen human rights in Canada. Foremost among these we would mention, is the need for a Federal Fair Employment Practices Act which would seek to put an end to unfair employment practices, and foster proper relationships between employers and employees. It would declare to use the words found in the Fair Employment Practices Act recently proposed by the Liberal Party of Ontario, that "No employer shall discriminate against any individual or group in respect of terms, conditions or privileges of employment or discharge or refuse to employ any individual or group because of race, colour, creed, religion, ethnic or national origin or ancestry".

Besides this there is a need to extend the jurisdiction of the Supreme Court of Canada so that it can deal judicially with many important questions involving human rights and fundamental freedoms which now cannot come before it. Certainly such issues are of equal, if not greater importance, than monetary matters and the individual citizen should have the right to take such cases to the Supreme Court of Canada.

In subscribing to the United Nations Universal Declaration of Human Rights, Canada undertook to promote by progressive measures, universal and effective recognition and observance of human rights and fundamental freedoms in its territory. We feel that Canada would be setting an example for the rest of the world if it now proceeded and implemented this undertaking. We have approved these rights and freedoms as moral obligations. Having done this, it is no more than right that we should accept them as legal obligations as well.

We accordingly ask you to bring in a report which will seek to strengthen in spirit and support by law these fundamental human rights which will give Canadians renewed faith in the Democratic way of life and be a landmark in our history.

All of which is respectfully submitted,

NATIONAL COUNCIL OF JEWISH WOMEN OF CANADA.

The CHAIRMAN: Thank you, Mrs. Sugarman. That is a most enlightening statement, and presented in a very interesting manner. Now, have you any remarks of your own which you would like to add?

Mrs. SUGARMAN: I am glad that the National Council of Women in Canada brought in details of discrimination against women. I referred to it in passing. The National Council of Jewish Women comes of a people about which The Book shows the great importance of women—Ruth, Esther and other great heroines of the Old Testament—and we feel that we are today sufficiently important to be recognized. We feel that the women of today are in no lesser position than the women of other times. We believe that the National Council of Women of Canada has stated its case as fully as possible in the brief time allowed. As an affiliate of that organization we heartily concur with what has been said in specific cases, and in many cases still untold.

I am very happy that the gentlemen of the Senate today feel better when they think some day they might be supported by their wives in their rights. I might say that in many homes today there are women who take the full load, and not half the load. There are many women, from Mrs. Roosevelt down, who have been allowed the privilege of responsibility in the modern crucial post-war period. When they have been given the opportunity of discharging their duties they have done so with importance and grace. These factors we would like to strongly endorse as important to women, and not least important to the Council of Jewish Women of Canada.

The CHAIRMAN: Splendid.

Hon. Mr. REID: While complimenting the composers of the brief on its splendid literary quality, and the speaker on the manner of its presentation, may I ask whether some thought has been given to the wide latitude which may be taken as regards the right of freedom of thought, conscience and religion and the right of freedom of expression. I have in mind particularly the problem we in British Columbia have with the Doukhobors. These people defy all Canadian laws, and have decided to live their own life entirely irrespective of the consequences. There is a real problem. I am just wondering if the Council of Jewish Women have given any thought to the solution of a problem of that kind.

Mrs. SUGARMAN: I think the answer is contained in my reference to the rights of citizenship. These people should have been told about those rights, which they were not. I happened to see many of these people in my childhood on the prairies. They came to this country with privileges and rights which exceeded the rights of the natural-born citizen. They were given exemptions from responsibilities in many ways—which was wrong—because we wanted their labour or out of compassionate reasons. I repeat that this was wrong. If we had a bill under which everyone had to face the same responsibilities there would be, I submit, no Doukhobor problem.

Hon. Mr. REID: Of course, if we are aware of recent facts, we shall realize that the real problem now before us is not that of the elder people, but of the young people. It was young nudists, young ladies of nineteen or men of about that age, who led the recent parade through the city of Nelson. We had been thinking, and I suppose you too were thinking that it was only elder citizens who would do these things.

Mrs. SUGARMAN: I was in British Columbia when they were put on an island.

Hon. Mr. REID: And that did no good. They lay down and died, or would have died if they had not been forcibly fed.

Mrs. SUGARMAN: I still think that that is due to the background I have mentioned. Mr. Wismer will have to face the consequences of the sins of the

fathers, and so, for that matter, will the young Doukhobors. That truth is a part of human history. Fanaticism is encouraged because there is nothing to take its place. I wonder whether, if these young Doukhobor children had been forced to learn a bill of human rights, this thing would have occurred. Of course these are Doukhobors of a fanatical sect. I might here say that I have friends among the Doukhobor communities who are not fanatics. There are two branches of the Doukhobor people. There are those who are fanatical and pursue the search for a leader—which is a fanatical dream that they follow; it is a psychological condition, or something worse. Then there is the sect who are law-abiding, decent and honourable Canadians like the rest of us. So I feel that we cannot wrestle with that problem at this moment, but we can hope for the future never to allow people into Canada who do not know what are their rights and privileges, and I do not think we can offer those rights to people unless they are embodied in some document, and that is the document on behalf of which we are submitting a brief today.

Hon. Mr. REID: But I am asking, in the light of your document what is the attitude of your organization? What would it be if stern measures were taken? You and I might differ as to what measures should be taken. I am speaking of the problem of the younger Doukhobors, which is one of the greatest problems that faces us in British Columbia at the moment, and one for which no solution has been found. Never before in our history have we had a race which defied our laws. If the defiance had come from a group of Scotchmen, they would have "settled" them long ago, but because it is Doukhobors who are offending, they leave them alone.

Mrs. SUGARMAN: I feel that our organization, which has always stood for law and order, would expect that the Doukhobors should obey the present law as it exists in their community. We had the matter of unwillingness to serve, in connection with certain sects, during the war. We honoured the principle in Canada to the extent that it was possible for us to do so. It was a dreadful thing to have to allow certain people freedoms which were not allowed to others. I believe that in this I express the views of the National Council of Jewish Women.

The CHAIRMAN: Well, if there are no more questions, I think that concludes our session.

Mrs. DORMAN: May I say just a word or two on what Mrs. Sugarman has already said. It would be a good thing if we could eliminate hyphenated Canadians and just use the word "Canadian". We have too long had the idea of "Ukrainian-Canadians" or other denominations of Canadians. Let us just keep in mind that one word "Canadian", that we are first of all Canadian citizens and owe our allegiance first to Canada, and we have within that freedom the right to our own way of living. But first of all we should become Canadians.

Mrs. SUGARMAN: I am very familiar with the United States because I have worked there at times with another group who originated the National Council of Jewish Women in the United States. Although we have our own charter in Canada, we have a strong affiliation with them. I know the United States very well, and I find that when the humblest citizen speaks of his rights there is a rise in his voice. It is possible to unify the American people very quickly, and they rally to something rapidly, although they also are of different races, creeds and colours, to such an extent that it is rather frightening, because their numbers are so large. At the same time there is a ring of sincerity in Americans when they speak of their bill of rights: they all have something in common: and I feel that it is one of the most constructive things about America of which I am conscious.

The CHAIRMAN: Mrs. Sugarman, we are certainly obliged to you and your associates for this excellent brief and the magnificent way in which you presented it.

Mrs. SUGARMAN: It is a great privilege to come before the Senate, sir.

The CHAIRMAN: Thank you.

That concludes our labours today, but do not forget that we have another series of delegations tomorrow. They are all exceedingly interesting, and these people are coming here at their own expense, and I think it is a fine public service they are giving us. I thoroughly appreciate your coming and devoting your time to it.

The committee adjourned until tomorrow, Thursday, April 27, 1950, at 10.30 a.m.

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THE SENATE OF CANADA



PROCEEDINGS
OF THE
SPECIAL COMMITTEE
ON
HUMAN RIGHTS
AND
FUNDAMENTAL FREEDOMS

No. 3

THURSDAY, APRIL 27, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

WITNESSES:

Messrs. Monroe Abbey and Saul Hayes, Canadian Jewish Congress;
Dr. E. A. Forsey, Canadian Congress of Labour;
Mrs. M. H. Spaulding, League for Democratic Rights.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.P.L.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF REFERENCE

(Extract from the Minutes of Proceedings of the Senate
20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

- (1) No person shall be subjected to arbitrary arrest, detention or exile.
- (2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.
- (3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the Province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

Attest.

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, April 27, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators Roebuck, Chairman; Baird, David, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Turgeon—10.

The official reporters of the Senate were in attendance.

Messrs. Monroe Abbey, Saul Hayes, and Ephraim M. Rosenzweig, National Vice-President of the Canadian Jewish Congress, National Director of the Canadian Jewish Congress, and Public Relations Director of the Canadian Jewish Congress, respectively; Messrs. E. A. Forsey, J. E. McGuire, and C. J. Williams of the Canadian Congress of Labour; Mrs. M. H. Spaulding, one of the co-Chairmen of the League for Democratic Rights, and party; and Messrs. Edmond Major and Gordon McCutcheon of the League for Democratic Rights, were present.

Mr. Abbey read a brief presented by the Canadian Jewish Congress, and Mr. Hayes was questioned by Members of the Committee.

Dr. Forsey read portions of the brief of the Canadian Congress of Labour, and was questioned by Members of the Committee.

Mrs. Spaulding read the brief of the League for Democratic Rights and was similarly questioned.

At one p.m. the Committee adjourned until Friday, April 28, 1950, at 10.30 a.m.

Attest.

JAMES H. JOHNSTONE,
Clerk of the Committee.

MINUTES OF EVIDENCE

The Senate,

OTTAWA, Thursday, April 27, 1950.

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. ROEBUCK in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum here and we have a very full program. We have a fine menu for today. We have the Canadian Jewish Congress, we have the Canadian Congress of Labour, we have the Civil Rights Union of Toronto, and the Civil Rights Union of Montreal. Is the Civil Rights Union of Montreal represented here? . . . Not yet, eh? At all events, we have three, which is quite a heavy program.

In opening this morning I want to make comment about the very excellent coverage this committee is receiving in the press. It is the custom to complain about the press, and if any member of the press makes a mistake you seem to be quite in order to take its hide off and complain and kick about the mistake. But it does not seem to be the rule in any of our deliberative bodies to express the pleasure that one receives in reading excellent articles in the press. I suppose one reason is that it is impossible to see all the press, you cannot keep up with it, and you are taking some risk, of course, in mentioning those that should be mentioned. I have, of course, read my own town papers—the *Globe* and the *Star* and the *Telegram*, and found excellent—simply excellent—reports in the papers, and the loveliest comments, and in the *Citizen* this morning, which I happened to see—I did not happen to see the *Journal*—there was a really delightful article by Mr. Grantham, one of the editors of that paper; and there was an excellent editorial in the day before. I am just impelled to express the pleasure that I have experienced in reading these articles this morning and generally in seeing the coverage given us by the papers. If that is out of order, and unusual—

Hon. Mr. TURGEON: Use the gavel!

The CHAIRMAN: I will use the gavel. I am calling the order merely by chance. I think probably this is the best order, but you will have to leave that to me, and I have no doubt you will. I think I will ask the Canadian Jewish Congress representatives to come forward: Mr. Saul Hayes, the National Director of the Canadian Jewish Congress; Mr. Monroe Abbey, and Mr. Ephraim M. Rosenzweig. Mr. Abbey is the National Vice-President; Mr. Rosenzweig is here on behalf of the Public Relations Committee of the Congress and the B'nai B'rith. Mr. Abbey, I think, is to carry the ball on the first kick-off.

Mr. MUNROE ABBEY: Before making our presentation, the Canadian Jewish Congress wishes to express its unqualified pleasure with respect to the Senate's decision to appoint this committee. Although we state this sentiment in your presence, we speak through you to the entire body of the Senate when we affirm our belief that in appointing this committee, it has rendered a distinct service to the entire country.

I. The entire pattern of human society is most conducive to harmonious cohesion, whose inner relationships are governed by a deeply rooted sense of justice, founded on the ancient spiritual principle of the inherent dignity of each member of that society. The translation of that principle into social

usage and/or into law is, in the eyes of our most creative thinkers, the manifest token of the extent to which a state may be regarded as existing on the higher levels of social advance.

For long periods of time men see or sense no threat to their social integrity as they try to formalize into usage and law the deepest aspirations of the human spirit. Indeed, it is not improper to say that a society's need to define itself in terms of the rights which it *de facto* and *de jure* confers upon its members—that is, upon itself—largely arises when the threat to its social integrity looms.

Today we live in such a world. The very existence of a United Nations organization bespeaks the urgent desire to find the way to lasting peace. Within the structure of the United Nations, there has been created a Universal Declaration of Human Rights which seeks to find the common denominator of our humanity as members of states and cultures. To this Declaration, Canada, recognizing its deep significance and intention, has given the support of its formal assent. As a matter of fact, Canada played a brilliant role in helping to formulate the United Nations Charter, with particular reference to Article 55, Section C of Chapter 9, wherein it is declared that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all, without discrimination as to race, sex, language or religion. It is to Canada's lasting credit that it has thus made clear where it stands on this vital question of human rights. Now, the United Nations Declaration of Human Rights has no legal status—but by the very force of its moral implications, it imposes upon the signatory the necessity of extending its provisions in the realm over which that sovereignty has power.

All this is not only true, but urgent, for the very awareness of existing social systems which challenge or deny our own makes necessary the renewed dedication to the principles upon which our democratic society is founded. In short, our whole social structure, the world around, is in the process of either change or challenge. It is a day when men must clearly see the flag around whose standard they rally. *Cum tacent clamant* here has no meaning; silence may mean not assent, but deterioration.

II. The Canadian Jewish Congress, enjoying as it does the confidence of Canada's Jewish citizens, welcomes the opportunity to present to this distinguished committee its views as to how the future of our great and free country can be secured. Like other organizations representative of Canada's citizens, we have given much and earnest thought to the issues posed in the opening paragraph of our statement. We have also looked to our own leadership, as to others of like mind, to formulate ways and means of implementing the urgent needs of our generation. To that end, we have reached certain definite conclusions with which we hope the members of this distinguished committee will be in agreement.

III. It is our conviction that any program involving concepts of human rights requires a clear definition of such rights and liberties, by which the people of Canada can be guided through the ideological storms of our time. It is that to which we referred earlier when we stated that in our time, more urgently than in any time heretofore, there is almost desperate need for the distillation into law of the wellsprings of our common heritage of freedom and democracy. We have in mind the declaration of principles enunciated in the Hon. Mr. Roebuck's motion which brought this committee into existence. It is our hope that the forthcoming Dominion-Provincial Conference will explore the possibility of including in any revision of the British North America Act a general statement as in the Universal Declaration of Human Rights, so ably reflected in the Hon. Mr. Roebuck's catalogue of human rights as presented in his motion.

IV. We are particularly impressed with the general statements of the Hon. Mr. Roebuck's motion, contained in the suggested articles 149, 150 and 151 to be added to the B.N.A. Act.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedom to which any person is otherwise entitled.

V. 1. If it is not deemed feasible to include such a statement, there is still a very sizeable task to which government can address itself. There are areas of federal legislative jurisdiction, in which the state has full and unequivocal powers over human rights and fundamental freedoms. Thus, the following persons are under federal control:—Armed forces, veterans, Indians and Eskimo, federal civil servants, employees of federal services and agencies, immigrants, aliens. In addition, there are certain freedoms which derive from the criminal law, such as speech, press, religion, association, habeas corpus, and the power to create new crimes protecting freedoms. Nor should we overlook that area which includes post office, radio broadcasting and customs censorship of books. Of course, there are other categories of federal jurisdiction which could be cited.

The CHAIRMAN: You have not mentioned here such public services as railroads and telegraph, which are included in the categories of federal jurisdiction in which thousands of people are directly interested, and still more thousands who are indirectly affected. They are all under the Dominion parliament.

Mr. ABBEY: We did not attempt to make this entirely inclusive.

The CHAIRMAN: You do not mind my interpolation?

Mr. ABBEY: No; in fact, I welcome it.

2. Now, a government, like an individual, is best entitled to, and most fully enjoys, freedom when it practices eternal vigilance. For that reason, we believe that government would do well to create a permanent joint committee of House and Senate, whose task it would be to make certain that no area of federal jurisdiction fails to carry out the fundamental freedoms and human rights.

3. As a second safeguard or exercise in eternal vigilance, we subscribe to the idea that there is needed a Civil Rights section of our Department of Justice, which would function to investigate complaints about the violations of civil liberties, and could serve for all the administrative aspects of the program. Acting in co-operation with a joint parliamentary committee, as well as with other governmental departments, especially that of Citizenship and Immigration, it could provide substantial assistance on a permanent basis, and could thus improve the quality of its deliberations.

4. We would also recommend that the federal government request the provinces to take such action as is appropriate for provincial jurisdictions in order to insure similar protection of human rights and fundamental freedoms in the provincial areas as the federal government gives in federal areas.

5. Finally, the federal government should exercise its power of disallowance in respect of provincial legislation which manifestly violates the spirit of the Declaration of Human Rights, to which the Government of Canada has already given approval.

Such is our thinking on this crucial matter. May we conclude by again reminding this committee, that like charity, civil rights and fundamental freedoms begin at home—by which we mean the federal government itself in all its manifold jurisdictions. But he walks straightest who sets himself a specific landmark to follow, and so we reiterate our suggestion that the revision of the British North America Act include a clear-cut statement of principle. Were that unfeasible, government would still find excellent guidance in the Universal Declaration of Human Rights to which it has already put its signature, and thus accepted moral involvement.

May we, in our closing sentence, quote from a Tracte of our Talmud, where it is written: "The day is short, the work is great; the Master is urgent. It is not incumbent upon you to finish the task, but neither are you free to desist from it altogether."

The CHAIRMAN: That is a simply magnificent statement. Now, Mr. Hayes, would you like to say something?

Mr. HAYES: I would like to comment on the point you made, Mr. Chairman, that there was omitted from the catalogue of federal jurisdictions the matter of that area of transportation, communications and so on. I might say, in all candour, that we were faced with a dilemma. Your statement of human rights, in parallel with that of the United Nations Declaration, did not deal with the social and economic questions which the United Nations Declaration has set forth. We felt that that was more or less a guide, not that we were bound by it but that it might be more appropriate to leave out that area of federal jurisdictions which is concerned with those matters, because of the impingement, perhaps, on the matter of the economic rights contained in the charter. And therefore we felt that we would rather leave that, if there was a question period, than to incorporate it into the formal submission. It is not a matter of great principle; it is only a matter of assessment of values in the written submission.

The CHAIRMAN: I commented yesterday, Mr. Hayes, on the reason why we did not include economic rights of men. The statement in the resolution mentions purely political rights, such as the right to *Habeas Corpus* and a number of other things of that nature. If we had gone into the economic rights we would have entered a morass that in all probability would have bogged us down. I hope the time will come when the Senate will establish a committee to go into economic rights. Having established the Bill of Rights, or the amendment to the constitution that you gentlemen are asking for, then let us turn to the very wide and very difficult field of economic rights and endeavour to secure to the individual the right of access to, for instance, the forces of nature, and so on. But one thing at a time. In what we have attempted we have a pretty big handful.

Mr. HAYES: Indeed.

Hon. Mr. REID: I should like to bring up this point. Today the world is divided into two camps. There are those who believe in the Soviet Russian idea, that the most important thing is to provide work, food and shelter for people. The Russians have concentrated entirely on that, and I suppose that at the United Nations and elsewhere the representatives of Russia have found out that our people have many of these economic freedoms and benefits. Now there is another thought, that perhaps the greater things in life are the rights of the free subject, the right to be protected by law, the right to think as you like, and to say what you like, and so on.

The CHAIRMAN: All those are political rights.

Hon. Mr. REID: They are political rights. And while we must eat and have clothing and shelter, I sometimes think that people will suffer a great loss if they

sell their birthright for a mess of potage, so called. I agree with the chairman that we should stress the political rights rather than the economic rights, important though economic rights may be.

Mr. HAYES: Mr. Chairman, may I make an observation? I hope it is not thought presumptuous, but we feel very definitely that without going into the entire question of what the charter should contain or what a Declaration of Human Rights should finally regulate, there are many areas which are so clear without constitutional questions or economic questions being involved but simply areas where the federal jurisdiction covers a wide variety of problems, that it would seem that the federal government must give leadership to the entire Dominion of Canada without going into difficult constitutional matters. Certainly no one on our committee is immune to the thought that they are difficult matters, but if there is some meaning to the statement that one should not wait for Utopia, then where the area is clear and without constitutional and political questions action should be taken without waiting for a rounded and perfected and comprehensive bill. That is the basic assumption that we should bring to this committee, that it appears to be incumbent upon the committee—if it follows the views that we have presented and that perhaps are shared by others—to make it known to the Senate and, from the Senate presumably to the House of Commons, that one need not wait for a covenant and Declaration of Human Rights nor for complete agreement from the entire Canadian public before one can come to grips with some very important matters on which there is no area of disagreement in constitutional law.

The CHAIRMAN: Are you referring to the social division of rights or amenities, Mr. Hayes? You have mentioned political and economic rights, but there are also social rights that are amenable to legal regulation.

Mr. HAYES: Yes, we would include every one of those rights, but divide the problem so that the project is not stifled merely because some of the rights may be found in the provincial jurisdiction. Whatever rights there are in the federal jurisdiction, those should be attended to without delay, and not wait until there is complete agreement on the whole difficult and thorny question of constitutional laws that arises from a policy of social and economic rights.

The CHAIRMAN: Perhaps I as chairman should not have too much to say, but there is one comment I should like to make in putting a matter up to you, and I assure you it is without offence. It is so easy to let George do it. There is a suggestion here that the Dominion government approach the provincial governments with regard to adopting rights of this kind within the provincial jurisdiction. Now would it not be more appropriate if the suggestion came from some organization such as yours, rather than from a co-ordinate jurisdiction such as the Dominion government, or even the Dominion parliament?

Mr. HAYES: I think our reply would be yes, but it would not be mutually exclusive; in other words, it would be up to the residents of any given province to complain that there are impingements of civil liberties, and ask that they be removed; it would be up to the Federal government, in addition, to settle that area where there is confusion in the interpretation of the British North America Act.

As one would say, "Don't leave it to George," but surely it works both ways; the Federal government is not to leave it to all the Georges of every single province.

The CHAIRMAN: Or the other Georges of other organizations.

Mr. HAYES: That is correct.

Hon. Mr. DOONE: May I ask for a clarification as to section five, page five? Is the purpose of that suggestion directed to something that is already in existence, or is it trying to make provision for the future?

Mr. HAYES: We have in mind, honourable senator, a number of examples where perhaps certain provincial laws do impinge upon constitutional liberties, whether written or unwritten. The feeling is always expressed by those who do not believe in the codification of laws, that you have your body of common law as precedents from generation to generation, and if you have it, it is not necessary to put it into statute form. Even where there is no codification of statute law, or common law I should say, the feeling is that there are a number of matters which impinge on most of these areas.

In the federal jurisdiction, in the general law of the land, we find the negative aspect in the criminal law: thou shalt not do this, thou shalt not do that. We feel there might be a parallel to it. Some have a feeling there might be a parallel to it in some of the provincial laws which give the people of Canada the feeling that there is abrogation of civil liberties coming within that framework, and should be given consideration by the federal authorities as to disallowance of those acts as impinging upon federal jurisdiction.

I am quite prepared to state categorically that it is easier for someone to say something in a brief than it is for the Department of Justice to act upon it. Our point, however, is to assert—and our guiding principle and theme is to be ever vigilant—that the federal power of disallowance might be used to-day, and might have been used in the past, and have prevented a feeling in quarters that there have been abrogations of civil liberties, which would have required only the Federal government to act under the disallowance provision.

The CHAIRMAN: Mr. Rosenzweig, have you anything to add?

Mr. ROSENZWEIG: No, there is nothing I wish to say, thank you very much. Mr. Hayes has acted very well as our spokesman. We had a previous conversation and agreed upon these matters.

Hon. Mr. KINLEY: Mr. Chairman, I find on the question of these social problems the people of the Jewish race are quite alert, and they do present many fine minds on this subject. The question occurs to me, is there any discrimination in this country that can be especially complained of, or do you regard it as an absolutely free country where you have the same privileges as everyone else?

Mr. HAYES: Mr. Senator, we would say in the main that by and large the record of Canada is particularly excellent; that subversive movements against Jews are not important. There may be a few crackpots, and there may be a few whom we know are bordering on lunacy.

But we do find something rears its ugly head, namely discrimination in regard to employment. I will be quite candid—I would be less than frank if I omitted to be candid in this matter—and say that those big businesses of Canada who have a very definite policy of discrimination against employment of Jews are perhaps in the minority. I have heard of certain Ontario businesses discriminating against French Canadians; and have heard of, and know as a matter of fact, a number of utility organizations, insurance companies, banks and other organizations follow the practice of forbidding Jewish employment. Their theory is that they feel they have the right to employ whom they want, irrespective of moral obligations. Such organizations as public utilities, which have a virtual monopoly, have a public duty which transcends the views of an office manager or a personnel manager. We feel that is one of the sticky items in the Canadian situation.

We have asked certain provincial jurisdictions to remedy this problem because we feel that by and large it is up to the provinces. We have asked for what is known in the United States as a Fair Employment Commission. The

history of those commissions, where they have been set up, is that people with equal qualifications have equal rights to work, and many of the fears of these organizations have disappeared.

We do find, however, item number one, employment discrimination; item number two, we find restrictive competition in a number of areas. I would say that the pragmatic bill of rights is what has happened in Manitoba and Ontario. We complained of restrictive competition in Ontario, and as a matter of fact a number of cases were taken against those who wished to impose other laws against making restrictions on those who were Jewish. I think the phrase usually used was "undesirable citizens, such as Jews and Negroes". That was the classic phrase.

We complained so much to the province of Ontario that the government passed laws forbidding restrictive covenants, and that is now the law in Ontario. A good custom, like a light, can cast its shadow, and Manitoba did exactly the same thing. Mr. Campbell, the premier of that province, and the attorney-general, passed similar laws.

Mr. Senator, you asked the question as to whether or not there were any of these discriminations. Well, they certainly do exist. For instance, certain theatres in Nova Scotia forbid Negroes entering and there is no black mark against them—and that is not meant as a pun. The Negroes were refused admission.

Hon. Mr. KINLEY: I have never heard of Negroes being refused admission to a theatre in Nova Scotia. Where was it?

Mr. HAYES: It was at Amherst.

Mr. MONROE ABBEY: The Negro was not refused entrance to the theatre; it was a young girl, and she was not allowed entrance to the orchestra of the theatre, but had to go upstairs.

Mr. HAYES: There is documentary evidence of two such instances. The rarity of such instances does not indicate that the people of Nova Scotia practice discrimination. The fact is that the discrimination may have been on the part of the local manager or ticket taker at the theatre. Then there was the case in Montreal of the ejection of a Negro from the New York tavern.

These are unfortunate situations. Where they are unimportant we don't feel, as a minority group, that it is worthwhile starting a terrific fight about them. People are entitled to their likes and dislikes. Certainly there can be no law of the land which says that people must like each other. The question is to remove prejudice and to prevent discrimination, so that if a person does not like somebody else he will not prevent that person from enjoying the pleasures he has as a citizen of this country.

I come to the last item of discrimination, namely that of resorts. I think this is a pathetic situation, in Canada as well as in the United States. There are so many hotels and resorts which prevent people from entering, on the ground that they are of a certain race. So often these places say they are entitled to allow restricted clientele and to bar others on the ground that they are Jewish. If they want to debar a man because he is an inebriate or a social miscast, that is something else which to my mind is perfectly all right. We do not think he is entitled to say it on a general rubric that this person is Jewish, and therefore discriminate against him. As a matter of fact, that was learned partly by the Province of Ontario when they passed an anti-discrimination act some years ago, not preventing the managers from refusing admissions to hotels, but preventing the advertising of such offensive material; which, though it does not strike at the root principle, goes some way in preventing the advertising of this blatant discrimination. So that there are some evidence of support of the idea, Mr. Chairman.

Hon. Mr. KINLEY: You are a very intelligent man. Have you ever searched yourself to see if there is no reason why this condition should exist with regard to such well-educated people as yourself?

Mr. HAYES: Yes. There have been many studies made and there has been much introspection on the matter. Many theories are advanced. Generally, we feel it is an objective statement to make that most discrimination is an unreasoned thing; that when people are prevented from discrimination they themselves recognize that the discrimination was neither equitable nor fair nor even necessary.

The CHAIRMAN: Nor gentlemanly.

Mr. HAYES: I am leaving out the "gentlemanly" part, for obvious reasons,—that it is not a question in our mind of a matter of courtesy or chivalry, it is a matter of innate rights; that if a person enters the country, if he is an immigrant, or if his grandfather was born here, he has the inalienable rights of that country, whether they are contained in a bill of rights or are codified in the common law. To deny them hurts the country itself; never mind the effect on the person discriminated against; we accept that as a penalty; but, without sermonizing, it can be said that the effect on the total community is bad when you allow one pattern of citizenship to be imposed on one group and another upon another group. To have two or three conceptions of citizenship is not democracy. It is not suggested that in given cases Jewish people are without fault.

Hon. Mr. BAIRD: How do you suppose that such conditions are built up, and what causes them to continue? Why do people behave in this way when their cultures are intermingled? Should not these conditions remedy themselves?

Mr. HAYES: They should; and they do at a certain time. For example, in Europe prior to the war anti-Semitism was not a factor in matters of social discrimination. In fact, in the United States and Canada there are many more instances of the exclusion of Jews from resorts than there were in Europe. Then, of course, came the great cataclysm, the Hitlerian era, the contagion of anti-Semitism, not necessarily because Mr. Goebbels believed it, not necessarily because Goering believed it, but because it was a matter of *haul politique*, in order to create the situation necessary for Nazism and Fascism to continue. This is proved by the fact that in Japan, where there are not any Jews, and therefore no anti-Semitism, because there were no Jews for it to operate against, they had to create it in order to succeed in their political aspirations. But I think you would need a special committee to take the time to go into the causes of anti-Semitism. I know you have been looking at me as though I am impinging on the time of your committee too much.

The CHAIRMAN: No, no.

Hon. Mr. KINLEY: No.

The CHAIRMAN: No. We have enjoyed your remarks thoroughly. But a chairman's job is an exacting one. When you have a number of delegates, half an hour seems so inadequate to handle such a question as you have presented here. Your statement has been a model of condensation and accuracy, and you have made a splendid case. The half hour, however, has rather more than disappeared; and while I do not want to interfere with any questions or their answers, we must be just to those who are following.

Hon. Mr. KINLEY: I brought this up. I do not think that it is altogether a matter of indignity to one element. I have heard of farmers who put up the notice "No Englishmen need apply". So it is not altogether—

Mr. HAYES: We are as much against that. I mentioned already, looking at Senator Gouin, that very matter, that we have many evidences of an anti-French-Canadian feeling; and our desire for fair employment practices is just as keen because it will prevent discrimination against French Canadians or

such signs as "No Englishmen need apply" as it is for our own people, because we do not think that special rules for Jews would be either justifiable or practicable.

The CHAIRMAN: Or desirable.

Mr. HAYES: Or desirable. It is only that we feel that this situation in its entirety should be corrected.

Hon. Mr. KINLEY: You do not think that if a man becomes troublesome or non-co-operative the employer should have to keep him?

Mr. HAYES: On the other hand, there are many Jews who are employed by Jews who are fired every day, and rightly. The only thing I might add is that the Jewish community do not pretend to have all the virtues, but they certainly do not admit that they have all the vices.

Hon. Mr. GOUIN: It is just the general principle of no discrimination that is being advocated, no discrimination as to class, race, language or religion. With this I agree entirely. As to the remedies which I advocated, the question of disallowance in particular would require, I think, very, very careful consideration. The first years of Confederation were what I would describe as an example of disallowance being exercised almost continuously, and in my opinion very arbitrarily. I believe that it is mainly by persuasion that we can reach the objective that we all have in mind. We want to obtain the full recognition of the inherent dignity of each member of our Canadian society. But it is not by exercising what I would call compulsion, or trying to exercise compulsion, against the provinces, that we could obtain satisfactory results. What I stated before the Senate, and what I want to repeat in a few seconds, is that first of all we have to agree here, Mr. Chairman, on some fundamental principles and then to try to convince as many people as possible, and in particular the provincial authorities, that they should agree also on these fundamental principles; and what could be done by the Canadian Parliament, by the way, in so far as it is provincial jurisdiction which is affected, is merely to make a recommendation. I suggest that it has to be done in a very tactful way, otherwise, instead of helping our cause, on the contrary, with the delicate situation which is now existing, it would make things even worse than they are. The first federal-provincial conference was a great success; it exceeded, I think, all our hopes. What is under consideration is not the amendment of the constitution, it is only ways and means of amending the constitution. I said, and I have to repeat, that it will be a great pity to complicate too much that very, very difficult problem; and I suggest that we have to wait until they have agreed on a procedure, and then to say that it would be only reasonable to incorporate into our constitution at least some fundamental principles, even if we cannot agree upon as many general rules as we would like to make.

The CHAIRMAN: Thank you, Senator. Gentlemen, the committee wishes to thank you for your excellent and splendid presentation.

The next item on our program is a presentation of the Canadian Congress of Labour. The Department of Research of that great labour organization has done us the favour and the honour and the compliment of preparing a brief which Dr. Forsey, the Director of Research, will now present. Dr. Eugene Forsey. You have others with you?

Dr. EUGENE A. FORSEY: Yes; we have Mr. J. E. McGuire and Mr. C. J. Williams. Mr. McGuire is a member of our Executive Committee and Secretary-Treasurer of the Canadian Brotherhood of Railway Employees and other transport workers. Mr. Williams is our Director of Public Relations.

Mr. Chairman and members of the committee—

Hon. Mr. KINLEY: Excuse me, but is this the CIO?

Dr. FORSEY: No, senator, it is not; it does not exist in Canada. This brief is submitted by the Canadian Congress of Labour, which is a purely autonomous Canadian organization which does take in many branches, but not all, of the unions in the United States which belong to the CIO.

The CHAIRMAN: How long has it been in existence?

Dr. FORSEY: Since 1940.

The CHAIRMAN: And about how many people does it represent?

Dr. FORSEY: About 350,000. That statement is embodied in our brief. I am glad Senator Kinley asked that question because it is important to realize that this is an autonomous Canadian organization.

Hon. Mr. KINLEY: Who is the president of the Canadian Congress of Labour?

Dr. FORSEY: Mr. A. R. Mosher, and Mr. Conroy is our secretary-treasurer. We have I am afraid, Mr. Chairman, a brief which is by no means brief, and I am quite certain we cannot read it all in the time at our disposal now. Therefore, with your permission I am going to ask to have it tabled with the committee, and I shall read just certain parts to which I want to draw your attention.

The CHAIRMAN: We are in your hands.

Dr. FORSEY: The Canadian Congress of Labour, representing some 350,000 Canadian workers in a wide variety of industries, welcomes this opportunity of appearing before you. Labour is vitally interested in this question. It has reason to be. Individually and collectively, it has suffered more from the deprivation of human rights and fundamental freedoms than any other section of the community. Unions came into existence to gain these rights and freedoms for the workers. They remain in existence to protect what they have won and to gain more. Their burden will be considerably lightened if some of the most important rights and freedoms can be protected, by a fundamental law, against violation both by private persons and corporations and by public authorities—dominion, provincial and municipal.

That is one obvious reason why labour favours the incorporation of a Bill of Rights in our written Constitution. But there is a more basic reason. Unions can flourish, and workers can progress, only in a genuinely free and democratic society, in which the rights of all citizens, not merely of union members or wage earners, are secure. Canadian Labour not only abhors dictatorship, of any colour or stripe, by any class; it seeks for itself no special privileges, no rights, no freedoms, that it is not prepared to see granted equally to all other law-abiding citizens and their democratic organizations.

1. What do we mean by a Bill of Rights? A mere Act of the Dominion Parliament is not enough. What Parliament has done, Parliament can undo; and there are many things it cannot do at all. Many of the most important rights and freedoms lie wholly, or largely, beyond its jurisdiction. They are almost completely at the mercy of the provinces, and of the municipalities, over which the provinces have jurisdiction, and it is from provinces and municipalities that many of the worst attacks on freedom in the last fifteen years have come.

The Dominion has, indeed, certain powers of control over the provinces. The Dominion Government can instruct a Lieutenant-Governor to reserve any provincial bill, which then comes into effect only if the Governor-General, acting on the advice of his ministers, assents. It can disallow any provincial Act within one year of its receipt by the Governor-General. It can make remedial orders to protect certain rights of certain religious minorities in all the provinces except Newfoundland, under section 93 of the British North America Act, section 22 of the Manitoba Act, and section 17 of the Saskatchewan and Alberta Acts. If the terms of such remedial orders are not carried out by the provinces concerned, then the dominion parliament can pass remedial

acts to repair the omission. These powers are important, and should be used to protect fundamental rights and freedoms whenever necessary. But even if they were used to the full, they would not be enough. Reservation is manifestly no use once a bill has received the Lieutenant-Governor's assent. Disallowance cannot touch Acts which have been in force for more than the prescribed year; and there are some iniquities, like the notorious Quebec Padlock Act, which have been on the statute books for many years. Moreover, no one really expects any dominion government to make full use of its powers of control over the provinces to protect fundamental rights and freedoms. The power to make remedial orders and to pass Remedial Acts in relation to education is now probably almost a dead letter. Newfoundland did not even ask to have section 93 applied to her, preferring to rely exclusively on the protection of the courts. Reservation stopped the Alberta Accurate News and Information Bill in 1937. It did not stop the Quebec Padlock Bill in the same year, nor the Prince Edward Island Trade Union Bill of 1948. Disallowance wiped out a series of Alberta Acts infringing on fundamental freedoms in 1937 and the years immediately following. It did not touch the Quebec Padlock Act, which was quite as bad, or worse, nor the Prince Edward Island Trade Union Act of 1948 (though in this case the possibility of disallowance may have helped bring about the repeal of most of the 1948 Act in 1949.)

The use of the powers is uncertain. A good deal may depend on whether the Dominion Government in office at the time cherishes strong views of "provincial rights." Something may depend on its political courage. Much may depend on the political strength of the forces supporting and opposing the legislation. There is only too much reason to fear that the powers will not be used in precisely the cases where their use is most necessary. An uncertain protection against assaults on freedom is better than none at all, but it is not good enough. On the other hand, the certain protection afforded by a Bill of Rights may also be not good enough. Subtle but disastrous invasions of fundamental freedoms might slip through the meshes of the legal net, and the Dominion's present powers of control over the provinces would therefore still be necessary to deal with these.

A Bill of Rights to be effective must be part of our fundamental law. It must put the rights it seeks to protect beyond the power of both the Dominion parliament and provincial legislatures. It must subtract from the sovereignty of the legislative bodies to add to the sovereignty of the citizens.

2. But do we need a Bill of Rights? Britain has nothing of the sort. Her "Bill of Rights" is an ordinary Act of Parliament which Parliament can repeal at any moment. Yet, in practice, as everyone knows, fundamental rights and human freedoms are more securely established and more fully protected in Britain than anywhere else in the world. A great tradition of respect for individual freedom, of tolerance for dissent, of eternal vigilance, has made civil liberties practically impregnable. If Britain needs nothing more, why Canada?

First, Canada is a federal state. In Britain any local infringement of civil liberties can be remedied by the sovereign Parliament. In Canada it cannot. The municipalities are altogether beyond the power of the Dominion Government and Parliament, and the provinces, in practice, almost entirely so.

Second, Canada is a land of many peoples and many traditions. This enriches our national life. But it gives prejudice extra targets, and it means that the British tradition is only one among many, some of them much less tolerant or much less alert to the dangers of intolerance.

Third, the British tradition itself, in the matter of civil liberties, is a good deal less robust here, even among the people of British origin, than it is in Britain. Some of the worst outrages upon human rights and fundamental freedoms in

recent years have been perpetrated in parts of the country inhabited predominantly by people of British stock. It is only necessary to mention the notorious affair at Dresden, Ontario, and the villainous restrictive covenant at Point Edward, Ontario. Everybody knows that certain resorts patronized mainly by people of British stock refuse to admit Jews. The Prince Edward Island Trade Union Act issued from a community overwhelmingly British. The Quebec Padlock Act produced not so much as a squeak of protest from the two great English-language newspapers of Montreal; on the contrary, they defended it with enthusiasm (see, for example, their editorials of January 10, 1939).

We have a civil liberties tradition. It has been immensely valuable. Nothing can take its place. Even with the best Bill of Rights it will still be indispensable, for the defence of human rights and fundamental freedoms in the Courts is costly, and most of the victims are poor. Unless public-spirited citizens whose own ox is not being gored are ready to fight and pay for the defence of other people's rights, even the rights of those they totally disagree with, then freedom will fail, be the legal safeguards what they may.

Fourth, Britain has no written constitution, incapable of change by ordinary Act of Parliament. Canada has, and it establishes rights which neither parliament nor legislatures, can touch. It is possible that in time we shall develop here so powerful a civil liberties tradition that a Bill of Rights embedded in the written constitution, beyond the reach of parliament or any legislature, may become superfluous. But that time has not come, and there is no sign that it is coming soon. Meanwhile, such tradition as we have, though invaluable, is not enough. A Bill of Rights also is essential.

3. What should the Bill of Rights contain?

Two years ago, the committee for a Bill of Rights submitted to the joint committee of both houses on Human Rights and Fundamental Freedoms a draft amendment to the British North America Act embodying its idea of what a Bill of Rights should contain. This committee has before it, by its terms of reference, a second draft Act to which it is required to give particular consideration. The two cover much the same ground. The earlier draft states explicitly that it is to bind the provincial legislatures as well as the Dominion parliament. It does not contain the single provision of the second draft to which we take strong objection. On the other hand, it does not explicitly bind Dominion or provincial administrative officers or municipalities or private persons or corporations. It will perhaps be most useful if we consider, both drafts together, and submit our suggestions for a composite enactment incorporating the best features of both, with certain additions which we think necessary.

(1) We suggest that the heading "Civil Rights" in the 1948 draft is unfortunate and misleading, and likely to hinder the adoption of the legislation. The term "civil rights" is already used in the British North America Act, notably in section 92, head 13, which gives the provincial legislatures exclusive jurisdiction over "property and civil rights in the province" (except those parts of this subject-matter assigned exclusively to the Dominion by section 91), subject, of course to the Dominion's powers of control, already noted, and to the provisions of section 94. The use of the term "civil rights" in the Bill of Rights is unfortunate and misleading and likely to hinder its adoption because it suggests invasion of an important provincial jurisdiction, a jurisdiction particularly cherished by the province of Quebec, whose special system of civil law it preserves. No reasonable person in Canada has the slightest desire to undermine or whittle away that system, nor would the draft Act involve anything of the sort. As Professor Scott has pointed out, in his admirable article (27 *Canadian Bar Review*, No. 5, May 1949, pp. 497-536), the "civil rights" of section 92, head 13, are not the same thing as "civil liberties:" "They refer, with few exceptions, to the field of private law, not to public law All the civil liberties which

belong to the field of public and constitutional law are therefore quite distinct from the civil rights which derive from private law. The Civil Code of Quebec contains many civil rights but no civil liberties." (P. 508. See also pp. 509-11.) It follows that a Bill of Rights would not constitute an invasion of the provincial jurisdiction over civil rights, nor a subversion of the civil law of Quebec; and it is important that no words in the Act should give a contrary impression.

(2) We suggest that the proposed section 148 should begin: "Notwithstanding anything in this Act, it shall not be lawful for the Parliament of Canada, or the Legislature of any province, or any Dominion or provincial authority, or any municipality, or any person, to deny or abridge the rights conferred or confirmed by this and the three following sections." The enumeration of rights would then follow.

(3) It would follow that the enumeration would confer or confirm only enforceable rights, not such mere general declarations of principle as Article 13 (3) of the latter draft.

(4) We think Article 1 of the later draft might be dropped. Everything of real value in it seems to be covered in more precise terms elsewhere in one draft or the other or both. The bald statement, "Everyone has the right to life, liberty and the security of person" might be taken to prohibit capital punishment, and, indeed, imprisonment. We do not wish to express any opinion on capital punishment; but we do not think a prohibition of it belongs in a Bill of Rights.

(5) We doubt the necessity of a prohibition of slavery in twentieth century Canada, and the desirability of including in this enactment anything not really necessary. A prohibition of involuntary servitude, however, might be a useful and necessary protection of the right to strike, to which we attach the greatest importance. In 1946, it was indefinitely suspended in the basic steel plants, by Order-in-Council, on the eve of a legal strike.

(6) We suggest that Article 3 of the later draft should be broadened by including certain parts of clause (b) of the earlier draft: "No one shall be subjected to torture or to cruel, inhuman or unusual punishment, or to degrading treatment or punishment." It is important to prohibit anything like the "third degree," and the desirability of the rest of this clause is self-evident.

(7) Article 4 of the later draft we think might be expressed more precisely in terms adapted from the opening words of the fourteenth amendment to the United States Constitution: "All persons born or naturalized in Canada are citizens of Canada and their rights, privileges and immunities as such shall not be abridged or denied." This principle the Supreme Court of Canada, in the Alberta Press Bill reference case, tried to import into the existing British North America Act *via* the preamble to that Act; but it may be doubted whether the attempt was altogether successful, and we submit that the principle should be put beyond question. The Alberta Press Bill, the Prince Edward Island Trade Union Act of 1948, the Prince Edward Island Election Act (prohibiting non-residents from taking part in provincial elections), and the recent changes in the franchise for the Quebec Legislative Assembly, all show that something of the sort is necessary.

(8) Article 12 of the later draft would seem to follow: "Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to the country." We must point out, however, that, taken literally, this Article might be held to prohibit imprisonment; wartime restrictions on freedom of movement within certain defence areas; refusal of foreign exchange by the Foreign Exchange Control

Board; and the deportation of undesirable aliens by due process of law. With the general purpose of the Article we are in full agreement; but we suggest that its precise implications call for further study.

(9) Article 4 of the later draft was no doubt intended to cover much more than the provision we have suggested under (7), above. But we think the further points involved can be covered in more precise terms by adaptations of Articles 5-11, 13 (1) and (2), 14 (2), the proposed sections 149 and 150, and by some such specific provision for Fair Employment Practices and similar matters as is contained in sections 8-14 of the Saskatchewan Bill of Rights.

(10) We are heartily in favour of Article 5 of the later draft, "All are equal before the law and are entitled without any discrimination to equal protection of the law." We are also heartily in favour of the proposed section 149, "Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", with one qualification. The word "political" raises the possibility that Communists or Fascists might use this section to force themselves into positions from which, in the interests of public safety, they should be debarred. We do not favour any enactment which would lead to this result, though we admit the difficulty of framing a section which would protect the community against this danger without at the same time making easier improper discrimination against members of ordinary political parties.

(11) We suggest that the proposed Article 5 be immediately followed by a revised section 149, and this in turn by the provisions of the Saskatchewan Bill of Rights, sections 8-14:

8. (1) Every person and every class of persons shall enjoy the right to obtain and retain employment without discrimination with respect to the compensation, terms, conditions or privileges of employment because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsection (1) shall deprive a religious institution or any school or board of trustees thereof of the right to employ persons of any particular creed or religion where religious instruction forms or can form the whole or part of the instruction or training provided by such institution, or by such school or board of trustees pursuant to the provisions of *The School Act*, and nothing in subsection (1) shall apply with respect to domestic service or employment involving a personal relationship.

9. Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

10. Every person and every class of persons shall enjoy the right to acquire by purchase, to own in fee simple or otherwise, to lease, rent and to occupy any lands, messuages, tenements or hereditaments, corporeal or incorporeal, of every nature and description, and every estate or interest therein, whether legal or equitable, without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

11. Every person and every class of persons shall enjoy the right to obtain the accommodation or facilities of any standard or other hotel, victualling house, theatre or other place to which the public is customarily admitted, regardless of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

12. Every person and every class of persons shall enjoy the right to membership in and all of the benefits appertaining to membership in every professional society, trade union or other occupational organization without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

13. (1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsection (1) shall prevent a school, college, university or other institution or place of learning which enrolls persons of a particular creed or religion exclusively, or which is conducted by a religious order or society, from continuing its policy with respect to such enrolment.

14. (1) No person shall publish, display or cause or permit to be published or displayed on any lands or premises or in any newspaper, through any radio broadcasting station, or by means of any other medium which he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict, because of the race, creed, religion, colour or ethnic or national origin of any person or class of persons, the enjoyment by any such person or class of persons of any right to which he or it is entitled under the law.

(2) Nothing in subsection (1) shall be construed as restricting the right to freedom of speech under the law, upon any subject.

The CHAIRMAN: Where is the Saskatchewan Bill of Rights to be found?

Dr. FORSEY: It is embodied in an act of the province of Saskatchewan, passed in 1944 or 1945, I think. I am sorry that I inadvertently left out the reference to the year and the chapter, but I shall be glad to give the reference to the committee later.

(12) The necessity for provisions of this kind had been made painfully evident. At our last convention, our National Committee for Racial Tolerance reported as follows:

... a careful survey of the situation in Canada will reveal the existence of racial and religious discrimination ...

A common form of property discrimination is the restrictive covenant. It is found in deeds or leases and is inserted to exclude members of certain religions or races from buying or renting property. One such covenant was recently included by Joseph H. Murphy in the land-deed of a housing development in Sarnia, which excluded all people whose ancestors were from "that part of Europe lying south of latitude 55 degrees and east of longitude 15 degrees east," excepting those people who are "four generations removed from such territory, unless they are wholly or partly of Negro, Asiatic, coloured or semitic blood." It can be seen from this deed that people whose ancestors came from France, Italy, Greece, Germany—in fact, from anywhere, except the British Islands, Denmark and Southern Norway are barred from buying property in this development. Recently, a number of similar deeds came to light in the Lake Simcoe area, the Lake Huron area and a number of other places.

During 1949, the appeal court of Ontario has dismissed by unanimous decision an appeal to set aside the judgment of Mr. Justice Schroeder of last year which upheld a discriminatory clause in a property deed

barring Jews and Negroes from buying property in Beach O'Pines, near Sarnia, Ont. Mr. Justice Schroeder had indicated that it was not within the power of the court to legislate in such matters, since there was no law in Ontario which barred the inclusion of such restrictive clauses in property deeds. He pointed out that the change in the law was entirely the responsibility of the Ontario legislature. His opinion has now been reinforced by the unanimous decision of the higher court. . . .

The extent of discrimination in employment in a number of Canadian provinces is not generally recognized. Such discrimination is often a subtle thing and difficult of proof. In 1948, a writer for a national Canadian publication disclosed the result of a project he had undertaken. He found that out of 47 telephone applications for jobs, 41 out of 47 were granted interviews when the name used was Anglo-Saxon. Only 17 out of 47 interviews were arranged when the name used was Jewish. A study made in Toronto, in 1946, by the central region of the Canadian Jewish Congress indicated that there is not a Jewish white collar worker employed by a Toronto bank office and no Jew or Negro on the city police force. Reports also from heads of employment agencies bring out many facts of discrimination, because of race, religion or national origin. The very practice of making inquiries on job application forms in respect to race and religion is an indication of an unhealthy situation. . . .

Some time ago, Brother Wm. MacDonald, Educational Director of the United Automobile Workers' Union for Canada, brought the following to our attention:

In April of this year, he and Kermit Meade of Detroit arrived to attend a union conference in Chatham, Ont. Reservations had been obtained by Brother MacDonald for both of them to stay at a prominent hotel in this city. When the hotel heard that Mr. Meade was a Negro they refused to rent a room to him. Both sought lodging in another hotel in Chatham only to meet with the same experience. As a result they had to spend the night in Windsor and drive all the way to Chatham.

The practice of excluding people from hotels and restaurants on racial grounds is entirely too common in a number of places. The words "Restricted Clientele" are widely used by summer hotels and in 80 per cent of the cases the motive is to keep out people because of their racial ancestry. A case against a hotel keeper in the Laurentians for ejecting two Jewish guests on the sole grounds that they were Jewish is now before the Quebec courts. Recently, the town of Dresden, Ont., received wide publicity because the restaurants, pool rooms, barber and beauty shops refused to accept the patronage of any of the neighbourhood coloured people, who form 17 per cent of the town's 2,000 population. . . .

(13) The reports of the recent parliamentary Committees on the Indian Act have also drawn attention to the deplorable shortcomings of our policy towards these original owners of our country. Revision of the Indian Act to redress persistent injustices is long overdue, and a Bill of Rights prohibiting discrimination would be of immeasurable assistance.

(14) Article 5 should also be supplemented by a strengthened form of the proposed section 150 in the later draft: "Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred." This, we think, is inadequate. More than once, in considering or undertaking test cases on the validity of provincial Acts, the aggrieved parties have found that there was no appeal beyond the provincial Courts. (See *Saumar vs. the Recorder's Court*, 1947, S.C.R. 492, and *In re Eula Patterson*, unreported, in

the Supreme Court of Canada, February, 1948. This latter case involved one of our own unions. The same difficulty arose in connection with any attempt to bring a test case against the Prince Edward Island Trade Union Act of 1948.)

(15) Article 7 (1) provides: "No person shall be subjected to arbitrary arrest, detention or exile." Two recent cases show the necessity for something of this kind. Both are described in the brief submitted by the Committee for a Bill of Rights to the Joint Committee of both Houses two years ago:

(a) The order in council which was passed on October 6, 1945, was another illustration of disregard of constitutional liberties. *Habeas corpus* was swept aside. Persons were detained and interrogated by a Royal Commission and before any Court trial was held, their guilt was publicized by findings of a Royal Commission. The ordinary protection of counsel and *habeas corpus* was denied to them. No charges were preferred against them but they were held incommunicado. No one would deny the gravity of the acts of disloyalty and espionage of which they were suspected. The need to abandon ordinary judicial procedures of investigation, warrants for arrest, trial and the right not to incriminate themselves were at least questionable. It is doubtful whether the abandonment of the ordinary judicial procedures in any way aided the detection or prosecution of those involved. Indeed it tended to distract attention from the gravity of the offenses that were disclosed and provided a dangerous precedent which could be used with less justification in the future.

(b) Under the sweeping powers conferred by the War Measures Act, the Executive (or Cabinet) in December 1945, some months after the cessation of hostilities and without reference to Parliament passed three orders in council, which if they had been enforced, would have exiled to Japan some 11,000 or more persons of Japanese origin, a large proportion of whom were Canadian born citizens. It is true that some of those liable to be "expatriated" to Japan had signed a request to be sent to Japan. But it is also true that none of them had committed any offence against the law or had been guilty of any acts of disloyalty. These orders were referred to the Supreme Court of Canada and on appeal to the Judicial Committee of the Privy Council for an opinion as to their validity. The Judicial Committee held that they were a wholly valid exercise of power by the Executive. Subsequently the government rescinded these orders and they were never enforced. The importance of this case, however, does not lie in the rights or wrongs of the orders themselves but in the implications of the judgment of the Judicial Committee. The Judicial Committee did not base its determination upon the fact that the persons affected were "of the Japanese race" nor on the fact that the orders for deportation in the main referred to persons who had signed "a request." Their reasoning would have applied with equal force had the persons to be deported been of the French or Scotch "race" or of any other racial origin, and whether or not any offence had been suggested or proved against them. In effect the Judicial Committee held that so long as the orders in council purported to be based upon the existence of an emergency, of "real" or "apprehended" war, that they could provide for the exile of any Canadian citizen at any time to any place, without trial and with or without proof of the commission or alleged commission of any offence. The Courts, it was held, had no obligation and indeed no right to consider whether such actions were in fact related to the emergency or necessary or reasonably necessary because of any emergency. They were required to hold the orders in council valid without anything but formal inquiry into the recitals to the effect that they were deemed necessary. If there had been in existence a Bill of Rights such as you have in the Constitution of the United States, the Courts would have had the power to inquire whether

or not the exile of citizens was in fact required by any clear and present danger and to have pronounced the orders invalid if their conclusion had been that they were not so justified. The fact that Great Britain and the United States had taken part in two world wars without finding it necessary to exercise any such extreme power of exiling citizens in wartime might have assisted the Court in its conclusion.

(16) Unions are particularly interested in freedom from arbitrary arrest because arrests of union leaders and members on trumped-up or frivolous charges have so often been used to break strikes. Doubtless the mere prohibition of arbitrary arrest by a Bill of Rights will not by itself put a stop to this sort of thing. But it will at least provide a solid basis for specific legislation on the matter.

(17) Articles 7 (2) and (3) and Article 8 go together:

7. (2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

8. Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of *habeas corpus* by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Unions are, again, particularly interested in protection of the right to reasonable bail. The imposition of unreasonable bail, following arbitrary arrest, is a further refinement of legal strike-breaking with which union leaders and members have become painfully familiar. The necessity for Article 7 (2) and Article 8 was, of course, illustrated by the procedure in the espionage inquiry, already described.

(18) The precise wording of Article 7 (1) and (2) may call for reconsideration. Article 7 (1) might be held to prevent any deportation of alien residents. Under Article 7 (2), on the other hand, it might be held, in deportation cases, that a mere hearing by a Board of departmental officials was enough to satisfy the requirement.

(19) Under Article 9, a properly constituted administrative tribunal like the Canada Labour Relations Board might be held not to be "an independent and impartial tribunal." We are anxious to preserve such tribunals, which, we think, perform an essential function which could not be adequately, or even tolerably, performed by the ordinary Courts. But the administrative tribunals must be properly constituted and subject to proper and effective safeguards. This is a complicated question, on which a Canadian Bar Association Committee recently submitted a very able report to that body. (26 *Canadian Bar Review*, No. 9, November 1948, pp. 1333-55.)

(20) We agree with Article 10, though the phrase "all the guarantees necessary" might be made more precise; for example, it might, like clause (e) of the 1948 draft, specify "the right to be represented by counsel." It is most necessary that the ancient Common Law principle that a man is innocent until proven guilty should be enshrined in our fundamental law. It is equally necessary that *ex post facto* laws creating retroactive offences or imposing retroactive penalties, should be prohibited. On the other hand, the outright prohibition of all *ex post facto* laws in the United States Constitution outlaws Acts of Indemnity, which can serve a useful purpose.

(21) The first part of Article 11, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence," is practically identical with clause (c) of the 1948 draft Act, and is certainly unexceptionable.

It might, however, be worth adding the very specific words of the fourth amendment to the United States Constitution, which embodies the vital principle of Lord Camden's judgment declaring general warrants illegal: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." A provision of this sort would probably render illegal section 14 of the Quebec Padlock Act, which empowers the Attorney-General to order the confiscation and destruction of any newspaper, periodical, etc., which he considers is propagating Communism or Bolshevism. It would certainly make illegal the provisions of section 9 of the Quebec Act Respecting Publications and Public Morals, which obliges any officer of the Provincial Police, and any constable or other peace officer, to seize, "with or without warrant," every publication subject to a censure order of the provincial Board of Cinema Censors. 118

(22) The second part of Article 11, however, providing protection against "attacks upon (a person's) honour and reputation," might, we think, mean anything or nothing: too much (as in England), or too little (as here), according to the state of the law of libel and slander. This part of the Article seems too vague and sweeping. There should be some definition, and some explicit protection of statements properly "privileged."

(23) The second sentence of Article 11, "Everyone has the right to the protection of the law against such interference or attacks", we endorse, subject to what we have just said about "attacks" on honour and reputation.

(24) The first two sections of Article 13 we endorse: "Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage. (2) Marriages shall be entered into only with the free and full consent of the intending spouses." The third we have already suggested should be dropped.

(25) We do not know what the first section of Article 14, "Everyone has the right to own property," etc., means. The second sentence, "No one shall be arbitrarily deprived of his property", we endorse.

(26) We heartily endorse Articles 15 and 16, and Article 17 (1):

15. Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

16. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

17. (1) Everyone has the right to freedom of peaceful assembly and association.

That religious freedom, and freedom of assembly for unpopular minorities need protection has been made abundantly clear by the history of Jehovah's Witnesses in Quebec and by the recent attack on the Plymouth Brethren in Shawinigan Falls. These cases, and the New Toronto case, (in which that town tried to prohibit distribution of union circulars in its streets) have also shown how necessary it is to protect freedom against not only the Dominion and the provinces but the municipalities as well. In the New Toronto case, the Courts held the civic by-law invalid. But in one of the Jehovah's Witnesses' cases in N.B.

Quebec, the Court of Appeals upheld the by-law, and the Legislature followed this up by an express enactment to the same effect.

(27) Article 17 (1) is the very corner-stone of trade unionism. But Article 17 (2) might be held to prohibit closed shop, union shop, maintenance of membership, and even the Rand formula. Union security is a hard-won right. We set great store by it. We shall not give it up without a struggle. If this clause was not meant to outlaw union security, then it should be dropped or redrafted; if it was so intended, then we shall be glad to submit detailed reasons for holding that any such prohibition would be a disastrous mistake, which would restrict freedom, not enlarge it. We have, of course, not the slightest objection to the most absolute prohibition of the use of force to compel anyone to join any association.

The CHAIRMAN: It would be useful if you gave us a counter-draft, because I assure you there was no intention to do what you suggest.

Hon. Mr. GOUIN: This statement was taken from the Universal Declaration, but I must admit it is subject to the interpretation that has been indicated.

The CHAIRMAN: Then we should like to have a counter-draft. Will you give us that?

Dr. FORSEY: I shall be very glad to, sir.

(28) Article 18 (2) (Everyone has the right of equal access to public service in the country) might be interpreted to mean, "regardless of qualifications or ability." We think the clause should make clear what we presume is its real intention: prohibition of discrimination on account of race, religion, colour or sex, etc., as in the proposed section 149 of this draft. We think also that, as we have already suggested, the prohibition should extend to all employment, not just public employment.

(29) Article 18 (1) and (3) provide:

(1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

The meaning of the first section obviously depends on the third. The first, declaratory sentence of the third section seems to us unnecessary, and might raise objection from those who would be unwilling to accept it without some reference to what they consider the divine basis of authority. The second, enacting sentence is open to the objection that, taken literally, it would abolish the right of the Crown to dissolve Parliament; elections would come automatically at prescribed dates, as in the United States. This would be a violent breach with our system of responsible government. We do not think this was intended; if it was, we are prepared to present detailed argument against it. If it was not intended to operate, then we think the point is better covered by a clause like that applying to the Dominion Parliament under the British North America Act, 1949 (No. 2), prohibiting provincial Legislatures from dispensing with the requirement for an annual session, and prohibiting them from prolonging their own lives except in time of real or apprehended invasion or insurrection if the continuation is not opposed by more than one-third of the members of the provincial Assembly. The Dominion Parliament is allowed to prolong its own life also in case of real or apprehended war, but this exception is manifestly unnecessary for the provinces.

(30) We are not sure what is meant by "equal suffrage." If it means equal electoral districts, then it is almost certainly quite unattainable in Canada, unless the phrase is very loosely interpreted.

(31) We endorse the proposed section 151. We suggest that the effectiveness of any Bill of Rights will be much enhanced if the Dominion and the provinces adopt something like the British Crown proceedings Act, 1947. (See the article on the subject by Sir Thomas Barnes, 26 *Canadian Bar Review*, No. 2, February 1948, pp. 387-98.) At present, the necessity of proceeding by petition of right could largely nullify even the best constitutional guarantees of rights against the Dominion and provincial Governments. In most jurisdictions, a fiat is granted almost automatically; but in Quebec, as the Roncarelli case proved, it is not.

We are not asking for the inclusion in the Bill of Rights of such "economic" rights and freedoms as the right to full employment, or freedom from want, or decent housing, or as much education for every child as he can profit by. Our reason is well stated in the brief supporting the 1948 draft Act, p. 7: "...not any belief that these economic rights and opportunities are unimportant or irrelevant to the consideration of creating genuine 'freedom' in modern society... We exclude them because the establishment of such rights is the function of detailed legislation and economic policy within the scope of Parliament and the provincial legislatures and indeed of international action. It is an illusion to suppose that the 'right of employment' or 'freedom from want' can be secured by the type of constitutional declaration which is envisaged in a Bill of Rights. Positive action is required for these ends, not the type of negative restriction on the power of governments or legislatures to interfere with traditional liberty which is properly the scope of a Bill of Rights."

4. What is the next step?

We are sorry to say we do not think that the adoption of a Bill of Rights as part of the written Constitution of Canada will be easy or quick. It will probably take some time. Meanwhile, attacks on fundamental rights and liberties go on. What immediate action is possible?

"In the first place," says Professor F. R. Scott, in the article already referred to, "it would seem highly appropriate for Parliament to endorse officially the Universal Declaration of Human Rights, thus putting itself on record as supporting the general principles therein set forth. Such endorsement, which could be by way of a resolution adopted in the Senate and the Commons, would no more infringe on provincial rights than did the signing of the Declaration itself. No single Canadian law would be changed by this act alone, but there would be a commitment of Parliament to an official statement of beliefs. It would make the carrying out of the principles a matter of public policy. It might even influence the decisions of courts having to decide whether private contracts were contrary or not to public order and good morals. It would make the Declaration something that had been voted on at Ottawa and not just something voted on in Paris. And if the federal parliamentary approval were to be followed by the approval of provincial legislatures, we should really feel that Canada had taken her stand fully and firmly on behalf of these fundamental freedoms."

Secondly, the present Joint Committee of the Senate and House of Commons might be constituted into a standing committee of Parliament. The work of such a committee is never finished. The 'eternal vigilance' necessary to maintain liberty is better sustained if organized. At the present moment there are only two standing Joint Committees at Ottawa—on the Library and on Printing. Fundamental freedoms, their preservation and extension in Canada, might perhaps claim an importance equal to these weighty subjects. The function of such a committee would be to survey the situation in Canada from year to year regarding the observance of freedoms, to supervise all federal laws and orders in council from this point of view, to make recommendations for amendments or new legislation to Parliament, and generally to keep alive the interest of members and of the public in the subject. The steady work of such a committee

over the years, the accumulation of records and experience, the regular publication of reports, would make the issue of freedom and human rights matters of national concern to the annual sessions of Parliament.

Finally, the experience of the United States may suggest a course of action which could be followed with profit here. In 1939, Attorney-General Frank Murphy established a Civil Rights Section in the Department of Justice at Washington. Its purpose was to encourage more vigorous use of federal laws protecting human rights and to centralize responsibility for their enforcement. When the President's Committee on Civil Rights reported in 1947, it declared that 'the Section's record is a remarkable one' and recommended that the federal civil rights enforcement machinery should be greatly strengthened. There are of course differences in the Canadian constitution which must be taken into account, but since the Criminal Law in Canada is federal in origin it seems true to say that our Parliament has a greater responsibility for maintaining fundamental freedoms than has the American Congress. The duty of such a section would be by no means entirely punitive. It could investigate complaints about the violation of civil liberties, and could serve as a centre for all the administrative aspects of the programme. Acting in co-operation with a Joint Parliamentary Committee, it could provide secretarial assistance on a permanent basis for the committee and could thus improve the quality of its deliberations." ("Dominion Jurisdiction over Human Rights," 27 *Canadian Bar Review*, No. 5, May 1949, pp. 534-6.)

Second, the Dominion should make use of all the very extensive power it already possesses to protect fundamental rights and freedoms. Just what this amounts to has been set forth in detail by Professor F. R. Scott, in the same article.

We should like to lay particular emphasis on the powers of disallowance and reservation of provincial legislation.

There have been at least seven flagrant provincial invasions, or attempted invasions, of fundamental rights and freedoms in the last fifteen years. Each of them deserves to be described at some length here.

(1) The Credit of Alberta Regulation Act, 1937. This set forth as its object the control of banking in Alberta to "attain for the people of Alberta the full enjoyment of property and civil rights in the province", required every "banker" to obtain within twenty-one days a licence from the Provincial Credit Commission, at a fee (not exceeding \$100 for each building in the province in which "the business of such banker is conducted") to be fixed by the Commission. Every bank employee had also to obtain a licence, at a maximum fee of \$5. The Social Credit Board was empowered to appoint one or more "local directorates" (on which the "banker" was to have two representatives) "to supervise, direct and control the policy of the business of the banker... for the purpose of preventing any act by such a banker" or his employees "constituting a restriction or interference, either direct or indirect, with the full enjoyment of property and civil rights by any person within the province." Each bank employee's application for a licence had to be supported by a recommendation of the local directorate; and every application for a licence, whether by a "banker" or an employee, had to be accompanied by an undertaking "whereby the applicant undertakes to refrain from acting or assisting or encouraging any person or persons to act in a manner which restricts or interferes with the property and civil rights of any person or persons within the province". The Provincial Credit Commission was empowered to suspend, revoke or cancel at any time and without notice the licence of any "banker" or bank employee who committed a breach of his "undertaking". For renewal of any licence thus suspended, revoked or cancelled, the Provincial Credit Commission could exact a fee not exceeding one thousand times the original fee. The Commission could also, with the approval

NB This is it

of the Lieutenant-Governor in Council, make regulations "prescribing the conditions upon which licences may be issued, and providing for the revocation, suspension or withholding of such licences", and "generally for the better carrying out of the provisions of this Act". Any unlicensed "banker" was to be incapable "of commencing or maintaining any action or other proceeding in any court in the province in respect of any claim in law or in equity".

(2) The Bank Employees' Civil Rights Act (Alberta), 1937. Under this Act, any unlicensed bank employee was rendered incapable of "bringing, maintaining or defending any action in any court in the province which has for its object the enforcement of any claim either in law or equity."

(3) The Judicature Act Amendment Act (Alberta), 1937. Under this Act, "No action or proceeding of any nature whatsoever concerning the constitutional validity of any enactment of the Legislative Assembly of the Province shall be commenced, maintained, continued or defended, unless and until permission to bring or maintain or continue or defend such action has first been given by the Lieutenant-Governor in Council."

(4) A Bill to Ensure the Publication of Accurate News and Information (Alberta) 1937. This measure required "every . . . proprietor, editor, publisher or manager of a newspaper" (daily, weekly or monthly) "published in the province" to publish, whenever so ordered by the Chairman of the Social Credit Board, "any statement by the Chairman relating to all or any of the matters following: (a) The objects of any policies of the Government of the province; (b) The means being taken or intended to be taken by the Government for the purpose of attaining such objects; and (c) the circumstances, matters and things which hinder or make difficult the achievement of any such objects." The statement was to be printed in the type ordinarily used in the paper and was not to exceed one page in length in a daily paper or one-tenth of the issue in any other. So far so good. But every statement was to be "privileged for all the purposes of the Libel and Slander Act and no action" was to be "maintainable by any person in respect thereof." Furthermore, every "proprietor, editor, publisher or manager of any newspaper" was required, on written order by the Chairman of the Social Credit Board, to make within twenty-four hours a written "return . . . setting out every source from which any information emanated, as to any statement contained in any issue of the newspaper published within sixty days of the making of the requirement, and the names, addresses and occupations of all persons by whom such information was furnished to the newspaper, and the names and addresses of the writer of any editorial, article or news item contained in any such issue of the newspaper." If the "proprietor, editor, publisher or manager of any newspaper" had been "guilty of any contravention of any provisions of the Act, the Lieutenant-Governor in Council, upon the recommendation of the Chairman", was empowered to "prohibit (a) The publication of such newspaper either for a definite time or until further order; (b) The publication of any information emanating from any person or source specified in the order" (Section 6). Every person who contravened any provision of the Act or made any default in complying with any requirement made pursuant to the Act was to be liable to a fine of \$500, while anyone contravening the provisions of any Order in Council under section 6 was to be liable to a fine of \$1,000.

(5) An Act Respecting Communistic Propaganda (Quebec), 1937 (the Padlock Act). This Act first makes it "illegal for any person who possesses or occupies a house within the province to use it or allow any person to make use of it to propagate communism or bolshevism by any means whatsoever" (Section 3). Neither "communism" nor "bolshevism" is defined anywhere in the Act, but by Section 1 the word "house" is very carefully defined to mean "any

building, penthouse, shed or other construction under whatever name known or designated, attached to the ground or portable, erected or placed above or below ground, permanently or temporarily, and in the case of a house within the meaning of this paragraph situated partly in the territory of the province and partly outside such territory, the portion situated within the territory of the province". Section 4 provides that "The Attorney-General, upon satisfactory proof that an infringement of Section 3 has been committed, may order the closing of the house against its use for any purpose whatsoever for a period of not more than one year." Section 6 provides that "At any time after the issuing of an order in virtue of Section 4, the owner of the house may, by petition to a judge of the Superior Court, . . . have the order revised upon proving: (a) that he was in good faith and that he was in ignorance of the house being used in contravention of this Act, or (b) that such house has not been so used during the twelve months preceeding the issuing of the order." The Judge "may decree the suspension of the order, if the owner furnish in favour of the Crown such security as the Judge may fix guaranteeing that such house will not be used again for such purposes. . . In the case of subparagraph (b) of Section 6, the Judge may cancel the order" (Sections 7 and 8) "Any judgment rendered in virtue of Sections 7 and 8 shall be final and without appeal" (Section 9). The Attorney-General may, however, at any time permit the occupation of a padlocked house if he thinks it necessary for the protection of the property and its contents (Section 10). By Section 12, it is "unlawful to print, to publish, in any manner whatsoever, or to distribute in the Province any newspaper, periodical, pamphlet, circular, document or writing whatsoever propagating or tending to propagate communism or bolshevism." "Any person infringing or participating in the infringement of Section 12" is "liable to an imprisonment of not less than three months nor more than twelve, in addition to the costs of the prosecution, and in default of payment of such costs, to an additional imprisonment of one month. Part I of the Quebec Summary Convictions Act" (which forbids appeals except where the statute in question specifically provides for them) applies to the infringement of Section 12 (Section 13). By Section 14. Any constable or peace officer, upon instruction of the Attorney-General, or his substitute or of a person authorized by him for the purpose, may seize and confiscate any newspaper, periodical, pamphlet, circular, document or writing whatsoever, printed, published or distributed in contravention of Section 12, and the Attorney-General may order the destroying thereof."

It will be noted (a) that the Attorney-General can issue the padlocking order whenever he is satisfied that there has been an infringement of Section 3; he does not have to prove anything before a court of law, or even hold any proceedings whatever, public or private; (b) that Section 6 does not provide for any appeal, properly so called, to a court, but merely permits the landlord to petition for relief from the consequences of the Attorney-General's decision, and even then only on furnishing security that the property will not again be used for an undefined purpose; (c) that the Act gives a padlocked tenant no recourse to the courts whatever; (d) that Sections 9 and 13 prohibit appeals; (e) that the Attorney-General may order the seizure and destruction of literature without any judicial proceedings whatever. No wonder the Canadian Bar Association's committee on the subject commented: "The Act gives the Attorney-General powers which he can exercise in the first instance without the slightest judicial restraint, and takes away all the safeguards which even an ordinary criminal enjoys before conviction. . . It might be as well to observe that possibly it is under laws such as this that in other lands the homes of respectable and law-abiding citizens are ransacked simply because their owners do not wear a brown or a black shirt." The Bar Association's committee also calls attention to the

absence of any definition of "communism" or "bolshevism". This is the more serious in view of the very wide meaning given to these terms by the Premier and Attorney-General, members of his Cabinet and other prominent personages in Quebec. The Premier, for example, refused in the Assembly to insert a definition on the double ground that it was unnecessary ("Communism can be felt") and that "Any definition would prevent the application of the law." One member of the upper House suggested a definition which would include as Communists "those who daily vilify public men"; another was ready to have a definition that "Communism meant those actions which sap the foundations of the things dear to the province." Hon. T. J. Coonan, K.C., Minister without Portfolio, told a "service" club that the Act had to be wide enough to cover "the many who are Communists without knowing it." The Premier subsequently denounced the C.C.F. as "a movement of Communist inspiration." It should be added that the provisions of Section 87 (a) of the Quebec Civil Code and other legislation of the province make it exceedingly difficult, if not impossible, to test the validity of the Act in the courts. For example, the Provincial Police, acting on orders of the Attorney-General, confiscated on January 22, 1938, a motor car which was (they said) being used to distribute Communist literature. The owner sued to recover it. On July 20th, Mr. Justice Cousineau of the Superior Court ruled that no action lay except by petition of right to the Attorney-General. (The references are given in E. A. Forsey, "Canada and Alberta: The Revival of Dominion Control over the Provinces," in *Politica*, vol. IV, No. 16, June 1939, pp. 120-1.)

(6) The Trade Union Act (Prince Edward Island), 1948. The chief features of this Act are:—

(1) It prescribes that every union must file with the Provincial Secretary a certified statement that all its members are "employees" (section 5 (2)), defined to exclude "any non-resident of the Province" (section 3).

(2) It prescribes that the certified statement must also declare that the union "is autonomous, and that no action, deliberation, or decision of such trade union is directly or indirectly controlled or directed by any other person or group of persons" (section 5 (2)).

(3) It provides that the Provincial Secretary, "upon such filing... may grant a licence to such trade union for such period or periods as he in his discretion may deem advisable, and any such licence may be revoked or cancelled at any time in the discretion of the Provincial Secretary".

(4) It provides that "any person who represents himself to be a member of, or who purports to act directly or indirectly on behalf or under the authority of, any trade union, except for the purpose of complying with the provisions of subsections (1) and (2) hereof" (filing of certified statements), "during any period when such licence is not in force with respect to such trade union, shall be liable upon summary conviction to a fine not exceeding One Hundred Dollars for each such offence and in default to thirty days' imprisonment" (section 5 (4)).

The effect is:—

- (a) to prohibit even purely provincial unions with full-time paid officers or officials, unless such officers or officials are on leave of absence from an employer;
- (b) to prohibit all national and international unions, since such unions include non-residents of the province and cannot file the required statement of "autonomy";
- (c) to prohibit even purely provincial unions made up exclusively of "employees", except such as the Provincial Secretary may see fit to licence;

(d) to place even licensed unions at the mercy of the Provincial Secretary.

(7) An Act Respecting Publications and Public Morals (Quebec), 1950.

This is a fit companion for the Padlock Act, though it does at least define most of its terms. Section 2 provides that "No person shall, in the Province, print, publish, distribute or offer to the public any publication, or cause it to be printed, published, distributed or offered to the public, before a declaration has been deposited in the office of the Provincial Secretary stating the title of the publication, as well as the names and addresses of its publisher and of every person acting as agent of the publisher to distribute it to operators of news-stands for sale in the province.

Such declaration shall as regards publications already issued on the date of the coming into force of this act, be filed within sixty days from such date.

A new declaration to the same effect shall be made immediately after each change of publisher or distributor of the publication." Section 3 provides fines of from \$50 to \$500 for violations of section 2. Thus all bookstores, booksellers, libraries, printing shops and publishing houses handling any "publication" must supply this information to the Government before proceeding to handle the literature. A "publication" is defined as "any review, magazine or other writing published periodically and offered to the public, except the newspapers and other writings as governed by the Newspaper Declaration Act (Revised Statutes, 1941, chapter 53)." The definition section quaintly, and one might have supposed superfluously, adds: "This definition does not include publications of a religious character." Except for newspapers, however (a prudent, but logically indefensible exception) it does cover all other periodicals of every description, including scientific journals. Section 4 provides that "The Attorney-General may submit for examination by the Board of Censors any publication containing any illustration, either on the outside or within its covers, in order that the Board of Censors may decide whether or not an immoral illustration within the meaning of this act is involved." "Illustration" and "immoral illustration" are defined as "any drawing, photograph, picture or figure;" and "any illustration, in the sense of the preceding paragraph, which evokes real or fictitious scenes of crime or the habitual life of criminals, or morbid or obscene situations or attitudes, tending to corrupt youth and to pervert morals;" respectively. The Board of Censors examines the publication submitted, and "if it comes to the conclusion that an immoral illustration is involved, it shall issue an order" of "censure," which must be posted in the Board's office and sent to the publisher and his agents, and to the Provincial Police. Once such an order is posted, under section 7 the publication concerned, "subsequent copies included," can no longer be the object of any right of ownership or possession whatsoever in the province, and no person may claim such right as long as the order remains in force. Thus one "immoral illustration" in a single issue of a periodical affects all future issues, whether or not they contain an "immoral illustration." The second paragraph of section 7 provides that "The Board of Censors may repeal the order when the publisher of the publication enters into an undertaking to eliminate from it in future all immoral illustrations and gives the Board evidence satisfactory to it of his intention to observe such undertaking. From and after such repeal, the provisions of the preceding paragraph of this section shall cease to apply, as regards the future copies of the publication, so long as the Board of Censors does not issue another censure order with respect to it." Just what may be considered "evidence satisfactory to the Board" not to offend again is not clear. Under section 9 "Any officer of the Quebec Provincial Police Force, constable or other peace officer shall, with or without warrant, seize in the Province, every publication subject to a censure order issued under section 5 and bring it before a judge of the sessions or a district magistrate.

Upon the production of a certificate, signed by the president or the secretary of the Board of Censors, indicating that such publication is subject to such order,

the judge or the magistrate shall order the confiscation and destruction thereof." It will be noted that this police power is not permissive but mandatory. Every condemned publication "shall" be seized, "with or without warrant." The reference to the magistrate is no protection except to ensure that there was an order from the Board. The magistrate has no power to try the case, but only to order confiscation and destruction. He is merely the instrument of the Board. The power to seize and destroy covers all subsequent issues of the publication until the Board rescinds its order.

We hold no brief for bankers or for publishers of inaccurate news or immoral illustrations, nor even for errant trade unionists. We have fought, and are fighting Communism, harder than any other secular organization in Canada. But the measures just summarized raise issues far beyond those they profess to be dealing with. They burn down all our houses to roast their particular pigs.

Against measures of this kind which have actually come into force disallowance affords the quickest and most effective, and, if they are *intro vires*, the sole, remedy. There can be no doubt that the Fathers of Confederation meant the power to be used against unjust, oppressive or even unwise legislation. George Brown said it "secured that no injustice shall be done without appeal in local legislation", and his words were received with cries of "Hear, hear". Sir Narcisse Belleau said it could and would be used to protect the rights of Protestants in Quebec. Sir George Cartier said it would undoubtedly be used to protect the English-speaking population of Quebec against a gerrymander. Sir John A. Macdonald, in his report of June 8, 1868, laid it down that the Dominion Government, in deciding whether to disallow an Act, must consider "whether it be unconstitutional", and "whether it exceeds the jurisdiction conferred on local Legislatures"; whether it is "altogether illegal or unconstitutional", or "illegal or unconstitutional in part". Both from the report itself and from Macdonald's later practice, it is clear that he sharply distinguished between "illegal" and "unconstitutional", using "illegal" to mean *ultra vires*, and "unconstitutional" in its British sense, to cover legislation contrary to the conventions of the Constitution, or, more generally, inequitable or unjust.

The courts have held that the power may be used against "any law contrary to reason or to natural justice and equity", or "to prevent any practical inconvenience or mischief arising from the abuse of provincial legislative powers or from hasty or unwise legislation"; that it is "the true check for the abuse of powers as distinguished from an unlawful exercise of them". Constitutional authorities of unquestioned eminence have laid down the same principle. Todd called disallowance "the only power which can legitimately be put forth. . . to secure the adoption of sound principles of legislation in the various provinces". Dicey said it was "surely intended to be exercised to prevent the enactment of unjust laws". Kennedy says it was "inserted in the British North America Act to cover, in general terms, unjust, confiscatory or *ex post facto* legislation, against which there are express safeguards in the constitution of the United States".

Practice also supports this view. The Department of Justice says, "The precedents furnish instances of disallowance on four main grounds", of which the first is, "because the . . . Act . . . is an abuse of power and contrary to sound principles of legislation, as e.g., amounting to spoliation or a violation of property and vested rights, under contract or otherwise". Macdonald himself disallowed the three Ontario Streams Acts partly because they were contrary to reason, justice and natural equity, and "it devolves upon this Government to see" that provincial legislative power "is not exercised in flagrant violation of private rights and natural justice". The Manitoba Act 50 Vict.,

c.28 was disallowed partly because it was unusual, extraordinary, contrary to reason and justice, and manifestly interfered with private rights. Sir Lomer Gouin, in the famous MacNeil case, disallowed an Act cleanly *intra vires* on the grounds, among others, that it was "so extraordinary and so opposed to principles of right and justice, . . . without parallel in the history of Dominion and Provincial legislation," "that it clearly fell within the category of legislation with respect to which it had been customary to invoke the powers of disallowance"; and that he was not aware of "any circumstances whatever, moral, equitable or legal", which could be pointed to in justification of the Act. The Alberta Acts 2 Geo. VI (first session), cc. 7 and 29, were disallowed partly because they were "unjust" and constituted "the central part of the scheme of oppression and repudiation". The Alberta Acts 2 Geo. VI (first session), c. 28, and 3 Geo. VI, c. 80, were disallowed partly because they were part of "the central part of the scheme of oppression and repudiation" and provided for "wholesale repudiation". The Alberta Act 5 Geo. VI, c. 41, was disallowed partly because it was "part and parcel of the unconstitutional scheme of debt repudiation", and enabled "the executive, contrary to constitutional principles, to deny access to the courts". Chapter 62 of the same session was disallowed partly because it appeared to be "part and parcel of a scheme of debt repudiation and oppression of long term creditors". (The references are given in E. A. Forsey, "The Prince Edward Island Trade Union Act, 1948", in 26 *Canadian Bar Review*, No. 8, October 1948, pp. 1168-70.)

It is true that in all these cases the constitutional rights involved were rights of property or connected with property. But we hope it will not be contended that the Dominion should disallow Acts that injure property rights but not Acts that totally deny fundamental constitutional liberties of the subject.

May I refer in passing to the statement made by Senator Gouin a few minutes ago, about the prevalence of disallowance in the early days of confederation. It is interesting to note the fact that the government with the second highest record of disallowance per year was that of Sir Wilfrid Laurier, which disallowed thirty provincial acts in fifteen years. The only higher record was that of the Mackenzie government (1872-1878). It is usually considered that the Conservative governments were prone to disallow provincial acts and the Liberal government were not. A careful examination of the record shows that that conclusion is not altogether correct.

But is disallowance always an adequate remedy? If the Dominion always acted as fast as it did in disallowing the three Alberta Acts of 1937, it might be. On that occasion, assent was given August 6th, authentic copies reached the Governor-General on August 10th, and disallowance took place on August 17th. But such celerity is extremely rare, if not unparalleled. Under his instructions the Lieutenant-Governor is required to forward authentic copies of all Acts within ten days after assent. But in 1938, though the Lieutenant-Governor of Quebec assented to the Padlock Act on March 31st, it reached Ottawa only on July 8th. But even if the Lieutenant-Governor and the Post Office both do their duty, disallowance will ordinarily be a slow process. The Dominion government ordinarily, and properly, will not act until petitioned, and until the provincial government has had a chance to reply to the objections and to consider Dominion suggestions for amendment or repeal. All this will usually take some time; it may, legally, take a year from the date the Act reaches Ottawa. Meanwhile, the damage wrought by the legislation may be irreparable.

Against this, the only remedy would appear to be the Dominion's power to instruct a Lieutenant-Governor to reserve bills for the Governor-General's pleasure. The British North America Act, section 90, gives the Lieutenant-Governor power to reserve and bill "according to his discretion but subject to the provisions of this Act and to His Excellency's Instructions". Neither the Act nor the Instructions place any limitations on the "discretion". But orthodox

constitutional doctrine, laid down by Macdonald in 1873 and 1882 and reaffirmed by Mr. King in 1924, says that the Lieutenant-Governor should never reserve except in his capacity as a Dominion officer and, even then, except "in a case of extreme necessity", only on instructions from the Governor General.

The power is, as the Department of Justice remarked in 1938, "a statutory power in full vigour, and it cannot be said to have become inoperative through non-user. For even if it were the case (and it is not . . .) that this power had never been exercised, or had been infrequently exercised, . . . the continued legal existence of the power and the legal right of the responsible authorities, in the exercise of a sound discretion, to exercise it would be wholly unaffected by that fact."

There have been sixty-nine cases of reservation (as against one hundred and twelve disallowances), twelve since 1896, and five in the last thirty years. But in most, if not all, cases, and notably in the last three, the 1937 Alberta bills, the Lieutenant-Governor seems to have ignored orthodox doctrine and reserved without any instructions. This is certainly improper and undesirable, for the reasons Macdonald and Mr. King gave. But it would be perfectly proper for the Dominion Government to instruct Lieutenant-Governors to reserve any bills that the Governor in Council has *prima facie* evidence to believe would seriously abridge the fundamental rights of the citizen. Just as it is possible to secure a temporary injunction, to prevent irreparable damage by a person or corporation, so it should be possible to secure from the Dominion Government an instruction to reserve, to prevent irreparable damage by a provincial legislature. The Canadian Congress of Labour actually invoked this power in the case of the Prince Edward Island Trade Union Act of 1948, but without success.

This may appear a large invasion of provincial autonomy. Actually, it would not be. The whole history of disallowance, especially in recent years, is proof that no Dominion Government would dare use such a power except in cases of the clearest and most pressing necessity. Besides, reservation on such instructions would not kill the bill. It would simply ensure that it should not go into effect until the provincial Government had shown that it did not seriously abridge fundamental rights. Disallowance of such legislation is good; but prevention would be better.

The use of extraordinary remedies like disallowance and reservation would be less necessary if the Dominion's legislative powers were what the Fathers of Confederation intended them to be, or if we had a Bill of Rights on the American pattern. The Fathers thought even their much more centralized federalism needed the powers of reservation and disallowance. But now we are in danger of breaking up into what one of Mr. Duplessis' supporters has called "a free association of sovereign provinces." Now some provinces are claiming a quasi-Dominion status as "autonomous communities, in no way subordinate to the Dominion, though united by a common allegiance to the Crown, and freely associated in the Canadian Commonwealth of Nations." If the powers of reservation and disallowance were necessary in 1867, how much more now! The Fathers, as Sir Lyman Duff has said, "deliberately rejected the American system of constitutional limitations. So far as provincial legislation is concerned they adopted the safeguard of investing the Governor in Council with a power of disallowance." But there is no safeguard unless the power is used. (The references may be found in E. A. Forsey, "The Prince Edward Island Trade Union Act, 1948," pp. 1179-81.)

There is one other matter which we feel obliged to bring before this Committee, though we do not suggest that it should necessarily form part of a Bill of Rights. On the other hand, a Dominion Act on the subject could apply only to the Yukon and the Northwest Territories. None the less, the matter is

of such importance to us that we believe it should have the Committee's careful consideration. It is the question of the use of injunctions in labour disputes.

In the draft National Labour Code which we submitted to the House of Commons Committee on Industrial Relations in 1948, we included this section: "Notwithstanding anything contained in any other Act, no application for mandamus or injunction may be made to any Court in the Yukon or Northwest Territories in connection with any dispute or difference between an employer or employers and his or their employees except by or with the consent of the Board, evidenced by a certificate, signed by or on behalf of the Chairman of the Board." In the previous year, one of our largest affiliates, the Canadian Brotherhood of Railway Employees and Other Transport Workers, had submitted to the same Committee a reasoned statement protesting against "the indiscriminate and irresponsible use of the injunction process, particularly the *ex parte* interim injunction," which, it said, "is coming to be used with increasing frequency." It suggested that the Dominion Government might use its influence with the provincial Governments to induce them to pass legislation along the lines of the section we later included in our draft National Labour Code. The Brotherhood's argument was as follows:

"The injunction procedure comes into operation usually at a critical period of employer-employee relations. Generally speaking, the injunctive procedure is exercised by an employer in the event of picketing activities by his employees in the course of a strike. The Labour Relations Board and the Department of Labour in each province administers the relationships between employers and their employees up to the moment where a strike is called. Very often, in fact almost invariably, the Department of Labour carries on its attempts to settle a strike after a strike is called. The courts do not figure in the picture at any stage of the proceedings. To bring the courts into the picture at the most critical stage of the proceedings is clearly unreasonable and unrealistic.

Courts of law are not familiar with industrial relations. The injunctive process is highly obnoxious to organized labour and its indiscriminate use is certainly not conducive to industrial tranquility.

It is conceivable that the injunctive process could be used by an unscrupulous employer to frustrate or to negate existing laws respecting labour relations. For instance, the Labour Relations Board may certify a union as bargaining agent contrary to the wishes of an employer; after obtaining certification, a union may enter into negotiations for a collective agreement; the employer may refuse to negotiate or may not find it propitious to agree to a collective agreement; a conciliation board may be appointed which may recommend in favour of the union; the employer may disregard the Conciliation Board's recommendation leaving the union no choice but to strike. The union may then strike only to find itself frustrated by an injunction.

It is suggested, therefore, that the injunctive process should not be permitted to be used unless there is real justification for exercising it in order to restrain violence, real or apprehended, etc. By requiring an employer to obtain approval of the Labour Relations Board, the courts are not being deprived of any jurisdiction. It is merely a means of ensuring an investigation by a board whose approach to the problem would not be narrow and confined to the specific issue involved but, rather, would approach the problem from a broad standpoint and with a full knowledge of all the implications involved. Such a procedure would particularly avoid the unfair use of the interim injunction. At the present time, an employer, even though he may not have a good case, may gain his immediate ends by breaking a strike (legally called) by obtaining an *ex parte* interim injunction even though the courts may subsequently refuse to make the injunc-

tion permanent. It will be realized that this is not an unreasonable procedure when it is recalled that employees must apply under P.C. 1003, to the board for permission to prosecute an employer."

Immediately afterwards, the following exchanges took place between members of the Committee and Mr. Maurice Wright, counsel for the Brotherhood:

"Mr. WRIGHT: When an application is made *ex parte* to the superior court judge for an injunction proceeding the only evidence which as a rule is submitted to the judge in chambers is an affidavit on behalf of the plaintiff in the action. The judge, if he is satisfied that the affidavit indicates a *prima facie* case, will grant an interim injunction and the writ can be returnable within seven days. As suggested in the Brotherhood's brief, by the time the seven days may have elapsed, the strike, called for possibly a very good reason, might have been ended, principally because the interim injunction was obtained without notice to the other side—in this case the union—was obtained before the crucial stage of the strike. On the application to make the injunction permanent the application may be thrown out, but the harm has been done and the strike has been broken; and that is the argument.

Mr. MERRITT: But the affidavit would have to show the facts which constitute a *prima facie* breach of the law.

Mr. MOSHER: In the opinion of the employer only.

Mr. WRIGHT: I am saying this, that in actual practice—I speak from my own experience and that of other solicitors—it is not difficult to obtain an interim injunction from a judge in chambers. The presumption is made by the judge, and properly so, that there is a good *prima facie* case in favour of making an interim injunction. The court only goes into the issues broadly on the application to have the interim injunction made permanent.

Mr. TIMMINS: Supposing there was illegal picketing and the affidavit discloses that there was illegal picketing, there is nothing wrong about a judge granting an interim injunction on the basis of the material brought before the judge. After all, there are more than two sides to this matter—there is the public.

Mr. WRIGHT: I agree, sir, and I am not suggesting for a moment that there are not cases in which the injunction procedure would be capable of being used and properly so; but I do say—and if you refer to the brief that refers to cases where an unscrupulous employer—and unfortunately there are such—can use the device of the interim injunction to defeat a trade union's activities at the crucial stage of the proceedings.

Mr. TIMMINS: Just explain first of all whether you are talking about injunctions in Canada or injunctions that have been granted in the United States? What do you mean by the crucial point in a strike?

Mr. WRIGHT: I am referring only to Canadian experience. What I mean when I refer to the crucial stage of a strike is simply this, and we did give an illustration: a trade union may apply to the Labour Relations Board for certification; it may satisfy the Labour Relations Board that they enjoy the majority membership of the employees in a unit and they obtain certification. They enter into negotiations. They enter into negotiations with the employer. The employer may disagree with the trade union and refuse to sign the collective agreement that is submitted. The parties then apply for a conciliation officer. The conciliation officer may recommend to the minister that he is unable to effect a settlement and may recommend the appointment of a conciliation board. The conciliation board may be appointed—this may be hypothetical, but it is quite possible—this is legislation that the committee is considering at the present time—the conciliation board may meet and either by way of a majority decision

or a unanimous decision may recommend in favour of the employees. The employer may still be adamant in his stand and may still refuse to meet the terms of the union, and then in complete frustration the trade union, having no alternative, may see fit to call a strike, a legal strike within the meaning of P.C. 1003 and Bill 338. At precisely the moment when the trade union seeks to call a strike the employer may walk down to a judge in chambers and on the affidavit only of a general manager of the plant may obtain an interim injunction for a period of, say, seven days. Trade union funds are not limitless as some people will believe, and it is precisely within the period of seven days that the entire conciliation machinery may be defeated and the employees may not be able to hold out.

Mr. MERRITT: This seems to suggest that there is a weakness in the law generally. That is what happened in a case that did not involve industrial relations. Now, just carrying your hypothetical case one step further than you did, tell me what kind of affidavit you would visualize a general manager swearing to support the injunction? What fact would it allege which would be a breach of the law in the case you have suggested?

Mr. WRIGHT: He would allege, generally speaking, that the employees are watching and besetting his premises and guilty of unlawful picketing and as the result of illegal or unlawful activities property damage has occurred or something like that. Those are the allegations.

Mr. MERRITT: Those allegations are allegations of fact, and if those facts had no foundation then the person who swore the affidavit would be liable to prosecution for perjury; is not that the case?

Mr. WRIGHT: Technically, yes he would.

Mr. MERRITT: More than technically; in fact.

Mr. WRIGHT: Yes, in law he would be.

The VICE-CHAIRMAN: As a matter of fact, Mr. Merritt, what he does is: he says that in his opinion there is illegal picketing.

Mr. MERRITT: Mr. Chairman, you are interrupting; because I am rather interested in this question which seems to me to strike generally at the whole administration of our law—not only on the question of industrial relations. The witness did not say he suggests generally there is illegal picketing; what he said constituted facts.

The VICE-CHAIRMAN: I am giving the committee the benefit of some experience in connection, perhaps, with the injunction that was obtained here by the Ottawa Car Company just recently. I know what the affidavit contained. I think the committee would be interested, although the matter is one purely in the provincial jurisdiction and is under the Judicature Act. There is nothing we can do about it. The allegation there was one of alleging—I do not say there was not actual illegal picketing, but it was not proved—but in alleging that he was able to obtain an interim injunction.

Mr. MERRITT: The man who swore that affidavit took the risk that if his allegation was found to be baseless he would be liable to be prosecuted for perjury.

The VICE-CHAIRMAN: No, I do not think so.

Mr. MAYBANK: The affidavit can be made in such a way that even if there is proven grounds there is no danger of perjury. It may be completely disproven but there is not much chance of perjury being charged.

Mr. TIMMINS: Just to keep the record straight, we ought to put on record the fact that with respect of any injunction there has to be a bond put up by the person who obtains the injunction to be responsible for loss and damage. You cannot get an interim injunction without putting up a bond.

The VICE-CHAIRMAN: Yes, under certain conditions when damage is likely to ensue; but in these matters the judges are in the habit of giving injunctions without bond.

Mr. TIMMINS: Now, my second point is: if an interim injunction is given there is no question about it that the person against whom the injunction is given has got the right to arrange for an early appointment and have the matter disposed of forthwith. Thirdly, I do not believe that in Canada we have had an injunction granted which went to the root of defeating a strike or anything like that—nothing as bad as that I have ever heard of.

The VICE-CHAIRMAN: That is a matter of opinion. For the first time in this committee I must disagree with you on two cases that I think I know something of where that at least was the intention of the injunction; and in one case I think it rather worked out as they intended it should work out. But that is not a common practice and it has not become common practice, but it has been more in use in the last three months or six months than I have seen it in the last six years."

In the fall of 1947, the province of New Brunswick provided a glaring example of precisely the kind of abuse against which we are asking protection. On November 5 of that year, the employees of the Irving Oil Company began an admittedly legal strike. What followed is set forth in the brief which we subsequently presented to the New Brunswick Government in support of a request for remedial legislation:

"The employees attended about the company's place of business for the sole purpose of communicating information to the public that a strike was in progress. The picketing was peaceful and of a most conservative type. Notwithstanding the fact that the second and third days of the strike were Saturday and Sunday, on Monday the company's solicitor appeared in Chambers of a Judge of the Supreme Court, Chancery Division, armed with no less than seven affidavits, all but two of which were completed and sworn on Saturday, in language which was almost identical to the word. The affidavits avoided reference to any acts of violence; in fact, almost without exception, they indicated no cause of action whatever. The only evidence against one of the Defendants, Henry Harm, was that he was an organizer of the Canadian Congress of Labour! They referred to picketing by certain employees, though picketing, i.e., peaceful picketing, has been held by our courts to be lawful. Nevertheless, they all concluded 'that I had been advised by the solicitors for the above named Plaintiff and verily believe that the beforementioned picketing is illegal by reason of Section 501 of The Criminal Code of Canada and also that such picketing constitutes a private nuisance in respect of the company's real estate and plant.' On the strength of these affidavits, the learned Judge issued an interim injunction which restrained all and sundry connected with the employees or the union from 'besetting, watching, obstructing access to or from... the plant of Irving Oil Company Limited.' Further, this order, which was described as an 'interim' injunction order, was given not for two, three or four days, but for an 'interim' period of *thirty days*!

"Unfortunately, neither the employees nor the union were fully and properly apprised of their legal rights. Had they had the benefit of proper advice, they would have continued their peaceful picketing, which would not have violated the Judge's order, and this entire matter could have been tested in the courts. However, they were loath to do anything which might be construed as an affront to judicial authority and they promptly ceased picketing. This was precisely what the company wanted. How could these men of meagre means hold out for *thirty days* and then, in addition, wait for the trial of the action and at the same time conduct an effective strike? Of course, this was impossible. Thus the interim injunction forced them to discontinue their strike and to

accept any and all conditions imposed by the company. It is difficult to refrain from forceful language in describing the interim injunction and its implications. It is our considered opinion that no better example could be found of 'government by injunction.'

Our submission to the New Brunswick Government proceeded:

"...the *bona fides* of the applicant are of the highest importance in dealing with an *ex parte* application for injunction; and the *bona fides* of the applicant are best judged by his own conduct. How could the learned Judge know about the company's conduct? Obviously, he could not know anything about it. There was a government body which was quite familiar with the tortuous history of the negotiations and with the company's attitude throughout. This was the Labour Relations Board. This Board was thoroughly familiar with the complete case history. They had certified the union; they had appointed the Conciliation Officer; they had appointed the Conciliation Board. Yet no effort was made to draw upon the knowledge of this Board. It is submitted that it is illogical to have such a tribunal in existence only to disregard it or by-pass it at the most crucial stage of a labour dispute."

We are not suggesting that all use of injunctions in labour disputes is improper. It appears to us there are occasions—we think, rare occasions, perhaps hypothetical occasions—which may arise where there may be good reasons for issuing an injunction, to prevent irreparable damage to property.

We asked the New Brunswick Government for two enactments:

1. "Notwithstanding anything contained in any other Act, no application for mandamus or injunction may be made to a court in connection with any dispute or difference between an employer or employers and his or their employees, except by or with the consent of The Labour Relations Board, evidenced by a certificate signed by or on behalf of the Chairman of the Board.

2. (1) In this section 'labour dispute' shall mean any dispute or difference between an employer and one or more employees as to matters or things affecting or relating to work done or to be done by such employee or employees or as to the privileges, rights, duties, or condition of employment of such employee or employees;

(2) An *ex parte* interim injunction to restrain any person from doing any act in connection with any labour dispute shall not be for a longer period than two days."

The second of these is, of course, modelled on section 16A of the Judicature Act of Ontario, passed in 1942, the only difference being that the Ontario Act says four days instead of two.

The worst feature of this government by injunction as applied to labour disputes is this *ex parte* labour injunction, where people just appear and present two or three affidavits which allege nothing of any particular importance, and get an injunction almost for the asking. That is substantially the case here, in one particular case to which we refer. An injunction may last, as in that case, for thirty days, which is quite long enough to break any strike, regardless of the merits or demerits of the case in dispute.

We submit that legislation of this kind is essential if "government by injunction" in the hands of the judiciary is not to frustrate the purposes of the Labour Relations Acts passed by Parliament and the provincial Legislatures.

We shall be pleased to furnish the Committee with copies of our complete argument on the subject if desired, and with any other information or explanations we can give.

The work of this Committee is, in our opinion, of the highest importance, to Labour and to all Canadian citizens. Indeed, it seems to us so urgent that we feel the Committee should seriously consider devoting much more time to it

than seems likely to be available during the present session. We feel also that if the Committee could arrange to hold hearings in various parts of the country it would secure invaluable evidence both of the necessity for a Bill of Rights and other protection of fundamental rights and freedoms, and of the widespread and growing public opinion in favour of such action. Much of this evidence will never be presented here. The people who would like to give it cannot afford the time or money to make the long journey to Ottawa. But we think they ought to be heard.

The work this Committee has undertaken is vital not only to our material, moral and spiritual welfare but to our very existence as a free society. The fundamental rights and freedoms the Committee is considering are the very essence of democracy. Unless we can preserve and extend them, we cannot hope to survive in the struggle with totalitarianism, nor shall we deserve to survive.

The CHAIRMAN: Thank you sir. If I had any idea that you were preparing a document of that magnitude, some arrangement would have been made, I can assure you, that you would not have been hurried in this way.

Dr. FORSEY: I am afraid the committee, rather than ourselves, have suffered. I have no doubt that you and the other senators will have time and inclination to read this yourselves.

The CHAIRMAN: We will do that; and not only so, but it will appear in the records of our committee *in extenso*,—not just the part you have read, but the whole of it will be printed, and it will be read and considered. At the same time I regret that you have had to hurry through it in that way. It is a monumental document, it is almost a book; and it is very comprehensive; it is a splendid thing. We are grateful to you and indebted to you for it.

Are there any further comments that you would like to make? There are two delegations to follow.

Dr. FORSEY: None that I have, sir. I do not know if Mr. McGuire or Mr. Williams have anything to say.

Mr. MCGUIRE: No.

Mr. WILLIAMS: No.

The CHAIRMAN: Are there any questions that the committee would like to ask?

Hon. Mr. DAVID: I think, in the remarks the speaker made concerning the obtaining of interim injunctions, his words went a little further than his thoughts. There is an innuendo there that judges would grant very easily an injunction on a mere pretext, or without pretext whatever, if I understood you well.

Dr. FORSEY: Well, senator, we had in mind a particular case in the province of New Brunswick where, as it happens, the judge who granted the interim injunction is a relative of mine, and a gentleman for whom I have the very highest respect and regard, but he did grant the injunction on what we thought were very flimsy grounds.

Hon. Mr. DAVID: I think you might be prejudiced, because I feel our judges are very fair and respectful of the law and would not grant an injunction without having most serious reasons.

Dr. FORSEY: Well, in this case the judge, who is a very distinguished judicial figure, appeared to us to have granted this injunction on extremely slight grounds. While we quite agree with your comments on the judiciary generally, nevertheless we would say that our experience has been that in a good many instances our judges have not been thoroughly familiar with labour relations questions, and one of our proposals here is that an injunction should be granted only by or with the consent of the Labour Relations Board, and that no application for mandamus or injunction may be made to a court in connection with any dispute or difference between an employer or employers and his or their employees,

except by or with the consent of the Labour Relations Board, evidenced by a certificate signed by or on behalf of the chairman of the Board.

Hon. Mr. DAVID: You cannot insist upon that. You would be limiting the right of the citizen to apply to the courts.

Dr. FORSEY: We have set forth our reasons in this document and are prepared to set forth additional reasons in more detail. I admit that it appears to be a drastic innovation.

Hon. Mr. DAVID: You are speaking of freedom and rights and you are limiting the law.

Hon. Mr. BAIRD: Yes, it is ridiculous.

Dr. FORSEY: We feel for reasons we have set forth here briefly and can set forth at greater length that the interests of the good order and good government of society require that there should be this limitation, so that the Labour Relations Board, which is thoroughly familiar with the whole history of any particular case, can say, "Yes, this is a proper application".

Hon. Mr. KINLEY: What was the specific injunction the judge granted to which you have referred?

Dr. FORSEY: The picketing of a certain plant which had been struck there. In the opinion of our council it is highly probable that the injunction would have been overthrown had court proceedings taken place upon it, but by the time it was possible to do that the strike was over.

Hon. Mr. DAVID: What kind of plant was it?

Dr. FORSEY: It was the Irving Oil Company Limited plant, if I remember correctly.

Hon. Mr. DAVID: What year?

Dr. FORSEY: In November, 1947.

Hon. Mr. KINLEY: And the injunction was that the picket was prohibiting the—

Hon. Mr. DAVID: Illegally prohibiting.

Hon. Mr. KINLEY: —the employers from entering their offices at the plant. I think that was it, was it not?

Dr. FORSEY: Yes, that was it. The relative point appears mainly on page 31 of our brief.

Hon. Mr. KINLEY: The matter of picketing is going to be a very prominent feature in the Bill of Rights.

Dr. FORSEY: This was a case of entirely peaceful picketing which was entirely within the law.

Hon. Mr. BAIRD: Why do you term it as peaceful? Why do you want picketing if it has to be peaceful?

Dr. FORSEY: May I just go over this again:

The employees attended about the company's place of business for the sole purpose of communicating information to the public that a strike was in progress. The picketing was peaceful and of a most conservative type. Notwithstanding the fact that the second and third days of the strike were Saturday and Sunday, on Monday the company's solicitor appeared in Chambers of a Judge of the Supreme Court, Chancery Division, armed with no less than seven affidavits, all but two of which were completed and sworn on Saturday, in language which was almost identical to the word. The affidavits avoided reference to any acts of violence; in fact, almost without exception, they indicated no cause of action whatever. The only evidence against one of the Defendants, Henry Harm, was that he was an organizer of the Canadian Congress of Labour! They referred to picketing by certain employees, though picketing, i.e.,

peaceful picketing, has been held by our courts to be lawful. Nevertheless, they all concluded that 'I have been advised by the solicitors for the above named Plaintiff and verily believe that the beforementioned picketing is illegal by reason of Section 501 of The Criminal Code of Canada and also that such picketing constitutes a private nuisance in respect of the company's real estate and plant.' On the strength of these affidavits, the learned Judge issued an interim injunction which restrained all and sundry connected with the employees or the union from 'besetting, watching, obstructing access to or from... the plant of Irving Oil Company Limited.' Further, this order, which was described as an 'interim' injunction order, was given not for two, three or four days, but for an 'interim' period of thirty days!

Unfortunately, neither the employees nor the union were fully and properly apprised of their legal rights. Had they had the benefit of proper advice, they would have continued their peaceful picketing, which would not have violated the Judge's order, and this entire matter could have been tested in the courts. However, they were loath to do anything which might be construed as an affront to judicial authority and they promptly ceased picketing. This was precisely what the company wanted. How could these men of meagre means hold out for thirty days and then, in addition, wait for the trial of the action and at the same time conduct an effective strike? Of course, this was impossible. Thus the interim injunction forced them to discontinue their strike and to accept any and all conditions imposed by the company. It is difficult to refrain from forceful language in describing the interim injunction and its implications. It is our considered opinion that no better example could be found of "government by injunction."

And then our Council proceeds to describe what we think ought to be done about it. That, I admit, is a very brief account of the proceedings. We are quite prepared to furnish a more elaborate one if necessary, and I might add also that I am in the unhappy position of dealing with it in the presence of members of the legal profession. I am only a mere layman.

Hon. Mr. GOUIN: Mr. Chairman, this is largely a question of common sense. I have never heard in the province of Quebec of an injunction being granted *ex parte*. While away back in 1919 I presented a thesis on the right to organize and the right to strike, and I still stand by those principles, there is one thing of course which must be made quite clear. We cannot possibly revise here the code of civil procedure of New Brunswick or Quebec, but we would be in a position to consider the suggestions which have been made concerning the Yukon and the Northwest Territories. I for one would be glad if we were able to make sure that a system were adopted which would satisfy all the leaders of the trade unions and rank and file, and that would prove to be of justice and fair play to everybody in Canada. That must be very clearly understood by everyone. I fully understand that these are difficult questions. The fact that it is partly within federal jurisdiction and partly within provincial jurisdiction makes it that much more difficult. I may be wrong but personally I do not believe in a disallowance. I would prefer a thousand times more that we should have a code and that it would be the courts of the land which would apply the rules which are set forth concerning disagreements and everything else. Otherwise there is always the possibility of a purely political conflict arising between certain parties. The courts are absolutely above partisanship, and I believe the guarantee of justice is much more adequately made secure in that way. I would regard disallowance only as a safety valve in extreme cases. I believe in law.

The CHAIRMAN: Gentlemen, we must go on, much as I regret not being able to spend more time on this brief of the Canadian Congress of Labour. I may

say to you, Dr. Forsey, that had I known you were preparing such a brief, we would have made arrangements to allow you more time. However, we have the brief now and I can assure you that we shall read it—at least, I know that I shall.

Now, gentlemen, our next brief is from the League for Democratic Rights, and the delegation presenting the brief is headed by Mrs. Margaret Spaulding, of Toronto. Among the delegation are Mrs. Mae Birchard, member of the League's National Executive; Mr. Thomas Roberts, Secretary; Mr. Dewar Ferguson, of the Canadian Seamen's Union and Mr. Michael Korol, of the United Ukrainian Canadians.

Hon. Mr. DAVID: Mr. Chairman, may I ask who are the members of the board?

The CHAIRMAN: I have not that information. I have already given the names of the delegates.

Hon. Mr. DAVID: I should like to know who are the members of the board.

The CHAIRMAN: We shall have to ask the witness that. I will now call upon Mrs. Spaulding.

Mrs. MARGARET SPAULDING: Mr. Chairman, if you will remember, I telephoned you two days ago because over this last week-end the Civil Rights Union, the Civil Liberties Union of Montreal and the Timmins Labor Defence Committee called a national conference. It is at the request of the conference that this brief is now being presented on behalf of all three organizations. The brief was prepared in the first place by the Civil Rights Union, of Toronto, and is now endorsed by the other organizations and by the delegates who attended that conference. It was because I hoped to have the complete figures as to the numbers of people represented at the conference—there were 152 delegates—that I had asked for a postponement, because I expected that this committee would be interested in that question. We would be very glad indeed, Mr. Chairman, if you wish it, to send you the figures as to the whole representation, as soon as our Credentials Committee has completed its report.

The CHAIRMAN: Thank you.

Mrs. SPAULDING: I will now proceed to read the brief:

Dear Mr. Chairman and Members of the Committee:

We are pleased to appear before your Committee and take this opportunity of expressing our thanks for this privilege. The appointment of this special committee "to consider and report on the subject of human rights and fundamental freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada" is a matter of the greatest importance to all Canadians, and your deliberations and conclusions will have a profound influence on Canada's history.

Canada is at the crossroads. The countries of the world, including Canada are now debating the Declaration of Human Rights, in preparation for the discussions on the Covenant of Human Rights. Assistant Secretary General Henri Laugier, the United Nations Chief of Social Affairs, speaking at Lake Success on April 13th, 1950 said that unless we are alert, the Covenant will become "limited, weak, mild and a disaster . . . a narrow and feeble Covenant". He describes the Declaration of Human Rights as "powerful and far-reaching", and it is because we agree whole-heartedly with this statement, and because we feel that the rights as set forth in the Declaration should be guaranteed and enforced as law for every Canadian that we have come before you today. A Canadian Bill of Rights is sorely needed. We believe that the overwhelming majority of Canadians are of like opinion, and will support you strongly if you recommend such a Bill.

To prove the need for a Bill of Rights we would like to draw specific instances to your attention.

(A) The Padlock Act of Quebec is a glaring example of the infringement of the human rights and fundamental freedoms set out in many of the articles to which you are giving consideration. It contradicts the right of security of person (Article 1); the right of equality before the law, and the right to protection of the law without discrimination (Article 5); the right to a fair and public hearing by an independent and impartial tribunal (Article 9); the right to protection of the law against arbitrary interference with privacy, family, home or correspondence, and against attacks upon honour and reputation (Article 11); the right to own property alone as well as in association with others, and this article carries the added provision that no one shall arbitrarily be deprived of his property (Article 14); and the rights of freedom of thought, conscience, and religion; of opinion and expression; of peaceful assembly and association (Articles 15, 16, and 17). The Padlock Act has been on the statute books of the Province of Quebec for more than ten years. During this time it has been widely criticized as an invasion of Federal jurisdiction, as an unconstitutional act, as an infringement of basic rights, and yet continues to be used. In the latest application of the Padlock Act, on Friday, January 27, 1950, the Montreal Centre of the United Jewish Peoples Order, a cultural and fraternal organization was padlocked. The United Jewish Peoples Order have no recourse to law. Their right to carry on as an organization has not been taken away from them, but they have been evicted and deprived of their property. This Act has also been used against the Association of United Ukrainian Canadians in Montreal, and against other organizations and individuals. A Bill of Rights would make provincial legislation of this kind impossible.

Hon. Mr. DAVID: Excuse me, Madam, may I interrupt you to ask you a question?

Mrs. SPAULDING: Certainly.

Hon. Mr. DAVID: Do you know the facts as to the Montreal Centre of the United Jewish Peoples Order? I should like to have the facts, if you have them.

Mrs. SPAULDING: The Montreal Centre of the United Jewish Peoples Order is the Montreal Branch of a national organization. They carry on there a program that is cultural and educational. They also have a fraternal organization; that is, there is a type of insurance that is used there. I think the United Jewish Peoples Order has been in existence for some twenty-five years, in different forms, though perhaps not always under that name.

Hon. Mr. DAVID: Was there not a large quantity of communistic literature you have mentioned, a school where some fifteen or sixteen young men were receiving lessons in communism?

Mrs. SPAULDING: There is a school, sir, but not a school of communism.

Hon. Mr. DAVID: Was there not a large quantity of communistic literature seized at the centre at that time?

Mrs. SPAULDING: I do not think any statement has been made as to the literature that was seized. I know that typewriters and lists of members were taken away. I know that the library was taken, but, you see, there has been no court action in regard to it and so there has been no redress.

Hon. Mr. DAVID: Mind you, I am not prejudiced about it at all, and the reason I am asking you these questions is that I have seen in the newspapers some reports that in a school at this centre some fifteen or sixteen young men were being taught the principles of communism, and that a good deal of communistic literature was seized there, or nearby.

Mrs. SPAULDING: No, sir.

Hon. Mr. DAVID: I am sorry to have interrupted you then.

The CHAIRMAN: The real point that the witness is making is that there was no trial.

Mrs. SPAULDING: There was no trial, and no opportunity whatever for just such questions as the honourable senator has asked.

(B) There are many instances which may be cited of the infringements of the right to equal protection before the law (Article 5); the right to freedom of peaceful assembly (Article 17); the right to freedom of expression and opinion (Article 16).

1. In December, 1949, the Ukrainian Labour Temple in Winnipeg was attacked, but the hearing that took place as a result was a closed hearing, and the rioters went unpunished.

2. In December, 1949, a membership meeting of the Ukrainian Labour Temple in Timmins was broken into by an organized group, resulting in injury, violence, property damage; and in February, 1950, the case against the attackers was dismissed by the court. Had the constables present done their duty and dispersed the mob, or even remained at the scene, the riot would not have occurred.

In both these cases Canadians were not given that protection before the law that they have the right to expect.

(C) The right to freedom of thought, conscience, and religion (Article 15), is not protected at present in Canada.

There are innumerable instances of kidnapping, persecution, and attacks in Quebec cities and towns of the members of the religious group, Jehovah's Witnesses.

And on April 12th, 1950, a small group of people belonging to a Protestant sect known as the Christain Brethren were attacked by about two thousand people in their church in Shawinigan Falls, Quebec, and were not given protection by the officers of the law.

(D) The right to freedom of opinion and expression (Article 16) is particularly important if we are to have academic freedom in Canada.

In May, 1949, the head of the Bio-Chemistry Department of University of Alberta was arbitrarily discharged for alleged "radical" political views. In order to find employment for his considerable talents, ability and training, Dr. Hunter had to leave Canada.

In February, 1950, the President of the Alliance of French-speaking Catholic Teachers of Montreal, Mr. Leo Guindon, was discharged, presumably for the same reason.

Hon. Mr. DAVID: Just to keep the record straight, Mr. Guindon was not discharged. I say that Mr. Guindon was right in his attitude, and he was not dismissed on account of radical political views.

Mrs. SPAULDING: Thank you.

The establishment of academic freedom and freedom of expression and thought would do much to restore Canada to her former position as one of the leading countries in the world in education.

In Montreal recently, the Reverend Glen Partridge's contract with the Montreal Protestant School Board was terminated because he protested against Padlocking of the Cultural Centre of the United Jewish Peoples Order.

Hon. Mr. GOUIN: Mr. Chairman, I would like to know what is the reason given by the organization which we now have before us for the statements made on the previous page, page two, that the United Jewish Peoples Order

have no recourse to law. Under the Padlock Act there is the possibility of applying to the court. I am not now discussing the merits of the case, but at least there is that possibility; though a building has been padlocked one can apply to the court.

Mrs. SPAULDING: One of the great difficulties there is that under the Padlock Act no one quite knows what he is being accused of. They are accused of communism, with no definition of what communism is. The honourable senator asked if there was communist literature present. I do not know whether the possession of literatures makes one a communist; I would doubt it.

Hon. Mr. GOUIN: But the point I am discussing is merely this: you state that the United Jewish Peoples Order had no recourse to law. I strongly disagree with that statement, because, whether they could succeed or not with their petition, if they had a good cause I see no reason in the world why they did not apply to the Superior Court.

The CHAIRMAN: I am not familiar with that act, Mr. Senator, because it is Quebec law. Do I understand that there is an appeal from the Padlock Law.

Mrs. SPAULDING: To the Supreme Court.

The CHAIRMAN: To the Supreme Court?

Hon. Mr. GOUIN: What we call the Superior Court in the province of Quebec, which is our court of common law.

The CHAIRMAN: On what basis is the appeal? Does the Padlock Law give the attorney-general the right to padlock any place that he thinks is undesirable?

Mrs. SPAULDING: Yes.

The CHAIRMAN: And then what ground is there for an appeal? What do you argue?

Hon. Mr. GOUIN: I cannot quote the act exactly, but its pith and substance is the attorney-general may padlock a place which, in his opinion, is being used for subversive purposes, then the owner of the place has the right to apply to show that he was merely exercising his rights, though he may differ politically from the party in power in Quebec, or any other party.

The CHAIRMAN: Have any such appeals been made against the act?

Hon. Mr. DAVID: I was about to ask Senator Gouin if the man, Ship, had appealed the Padlock Act.

Hon. Mr. GOUIN: Yes.

Hon. Mr. DAVID: You are not referring to this case?

Hon. Mr. GOUIN: No, because in this case there was no trial and no appeal; I think, however, there were a couple of appeals. Of course this reverses completely the system which is generally followed, namely that we first go to the court to obtain a judgment, even for extraordinary remedies, which you Mr. Chairman are familiar with. This, of course, reverses the whole system.

The CHAIRMAN: It reverses the principle.

Hon. Mr. GOUIN: But I want the record to remain clear on that point. We have not yet reached the state of affairs in the province of Quebec when, even when a padlock has been applied, there is no recourse to the courts. There is recourse to the courts.

The CHAIRMAN: It reverses the whole principle of a person being presumed innocent until proven guilty.

Hon. Mr. GOUIN: There is not what we call denial of action; that is, no recourse to the court.

The CHAIRMAN: Will you proceed, Mrs. Spaulding?

Mrs. SPAULDING: There are other professions as well as teaching, where the freedom of expression and thought is unprotected in Canada. In the summer of 1949 RCAF veteran Gordon Martin was refused admittance to the bar of the law courts of British Columbia because the Benchers did not consider a lawyer had a right to belong to the Labour-Progressive party—one of Canada's recognized political parties.

Hon. Mr. DAVID: That is not exactly correct. The judge declared that he could not take the oath of allegiance.

Hon. Mr. KINLEY: Because he was a communist.

Mrs. SPAULDING: No, he was a member of a political party—

Hon. Mr. DAVID: He was an admitted communist.

Hon. Mr. KINLEY: That was sustained by the court of appeal only yesterday.

Mr. FERGUSON: Does the sustaining of that decision mean that a man cannot belong to the communist party?

Hon. Mr. BAIRD: Is the Labour-Progressive party a communist outfit?

Mrs. SPAULDING: They are Labour-Progressive.

Hon. Mr. DAVID: The man admitted frankly he was a communist.

Mr. FERGUSON: I think the party have made no bones about where they stand.

The CHAIRMAN: It has been perfectly well known that the Labour-Progressive party, headed by Tim Buck, is communistic. I fancy, though I do not know the facts, that the Benchers acted as they did because they assumed the victim owed his allegiance to Russia rather than to Canada.

Hon. Mr. DAVID: Exactly.

The CHAIRMAN: I do not know that to be the case, but I hope it is, rather than a disagreement over political views.

Mrs. SPAULDING: I think that is an extraordinary assumption.

The CHAIRMAN: I may be too kind.

Mrs. SPAULDING: If they did assume that, I think that assumption is going too far.

Hon. Mr. DOONE: Was it by way of an assumption, or did he admit the fact?

Hon. Mr. DAVID: He admitted being a communist, and being a communist he could not take the oath of allegiance.

Mr. ROBERTS: It would be the Benchers' assumption that he could not take the oath.

Hon. Mr. BAIRD: How could he bear allegiance to two countries?

Mr. ROBERTS: Was he willing to take the oath?

Hon. Mr. BAIRD: I suppose a communist would take an oath of allegiance to any country.

Hon. Mr. DAVID: It is a well known fact that a communist would take allegiance to any country, and remain loyal to Russia. If a man is willing to take the oath of allegiance, are you to believe the man or not?

Hon. Mr. BAIRD: If you find him out in other cases, certainly not.

Mr. FERGUSON: In the Martin case the man was in the Royal Canadian Air Force, took the oath of allegiance, and fought well.

Hon. Mr. KINLEY: It does not matter what he was. It is what he is now.

Hon. Mr. DAVID: We know that a man took the oath of allegiance not to be a traitor to England, and got work on a government project, and was a traitor from the first month he was there.

Mr. FERGUSON: There have been traitors all down the ages in every land. But in the meantime it is important to have a basic law such as is provided

here to ensure the fundamental freedoms and the rights of people to belong to a political party if they so desire. Are you going to make illegal a certain group who belong to a particular political party, which has a legal status in this country and whose members have held official offices? If so, you will have to say that certain members of Parliament or members of some legislatures should be removed from office.

Hon. Mr. BAIRD: They certainly should be.

Mr. FERGUSON: It would apply to members of the Manitoba Legislature and to others holding municipal offices across the country.

Hon. Mr. DAVID: It may be time to do what Australia has been doing.

Hon. Mr. KINLEY: Every union and every other organized body has a code under which it can remove certain members under certain conditions. After all, the body which has been referred to is the Bar Association, and that association has said that they will not admit to membership a person who would destroy the constitution of the country by force. The Bar Society has a right to bar anybody it likes, has it not?

The CHAIRMAN: Oh, I don't think so, Senator Kinley.

Hon. Mr. KINLEY: It is really a society which is keeping this man out of its membership.

The CHAIRMAN: Oh, no, it is much more than that. A Law Society has certain public rights, and the privilege of representing people in the courts. It is a public, not a private society. Our difficulty in discussing this matter is our utter lack of knowledge of what did take place. We are talking more in terms of systems; I mean, that our subject-matter is more systems than individual incidents. It may be that the Law Society was all wrong in its findings, it may be that the court was all wrong in its findings. Do we really attack the system, of a court to decide that, or of a society to decide it? That is really what is before us, rather than re-trying this case. If the man did owe his allegiance to Russia—if he did—probably the Law Society was justified in saying that he cannot take the prescribed oath. I do not know. All I know is what I have noticed in the papers.

Hon. Mr. KINLEY: What I want to point out is that under the "padlock law" the argument has been raised that there is no appeal and no chance to get to the courts for a fair hearing. In this British Columbia case it went through the courts, including the appeal court; therefore we must assume that the matter was judicially and fairly dealt with, must we not?

The CHAIRMAN: Until it is shown conclusively that it was not.

Mr. FERGUSON: Should there not be rights whereby no courts could do that? Should not certain fundamental freedoms be established?

The CHAIRMAN: We do not quite know the grounds on what this court acted. Possibly we shall, in the course of events; but we do not know now, and I doubt if you do, what the actual decision was. Now if the decision was that he was an adherent of Russia rather than Canada I do not know that we can criticize the court very much, but we are only guessing whether that was the fact or not. If they decided that because he belonged to some political party he was undesirable, we might not go with them.

Hon. Mr. DOONE: He is citing specific cases in which we are not sure of the details. Three specific cases have been questioned: one, with reference to the "padlock law" of Quebec; another, with reference to the dismissal of an official; the third, this specific incident here. They are subject to question as to whether the details are properly cited. If specific cases were left out and principles were discussed, probably we could arrive at—

The CHAIRMAN: We would get along faster. Let us let the witness proceed.

Mrs. SPAULDING: We used the cases, sir, to illustrate the lack of protection of freedom of opinion, which is one of the articles before this committee.

The CHAIRMAN: Yes. Go ahead, please.

Mrs. SPAULDING:

(E) The rights of Labour are not specifically set forth in the terms of reference of this Committee, but in any consideration of a Bill of Rights, and of an implementation of the Declaration of Human Rights, the rights of labour must be given a position of primary importance. These rights must include the right to organize in unions of the workers' choice, under their freely elected officers, to bargain collectively, to strike and to picket to protect jobs. Some of the necessary laws for the protection of labour are at present on our statute books, but are not adequately enforced; other sections of our labour laws are confused and cumbersome, and need drastic revision if we seek to implement the Declaration of Human Rights.

As illustrations of the failure to protect the rights of labour, the following examples are given:

1. In August, 1949, a strike took place at a small textile plant employing 60 workers in St. Lambert, Quebec. Fifty provincial police were brought to the scene while the picket line consisted of six strikers—all girls. Within a few days the entire picket line of six girls had been arrested and five of them charged with illegal assembly.

2. In the Asbestos strike in the summer of 1949, the behaviour of the Provincial police became a public scandal.

3. In Trenton, Ontario, on April 19, 1950, hidden microphones were discovered in a hall used by trade unions, and the wires attached to the microphones were traced to the nearby police station.

4. According to Canadian Labour Codes, employees have the right to choose the union they wish to represent them, and when a union has been certified, it has exclusive bargaining rights until certification has been revoked. Recently, the Patterson Company signed a contract with the Seafarer's International Union, although that union had never been certified on behalf of those engaged aboard the company's ships, and the Canadian Seamen's Union has been the recognized bargaining agent for years. According to federal labour laws, when a union seeks to replace a rival group as bargaining representative it is required to show proof that it has signed up the majority of employees in a unit. This was not done.

This denial of the right of workers to bargain freely with their employers through trade unions of their own choice is becoming more and more frequent, particularly in Quebec. In 1947 certification was denied to 114 unions, and in 1948 it was denied to 146 unions, despite the fact that the majority of workers in the respective plants belonged to the unions in question.

Clarification and strengthening of labour legislation, with a view protecting the rights of workers is a necessary step for Canada to take in order to assure human rights to the people of Canada.

(F) In Article 149 it states that every person is entitled to all the rights and freedoms set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Then there is the case at Dresden, which has been referred to this morning.

The CHAIRMAN: That has been pretty well established.

Mrs. SPAULDING: In Dresden, Ontario, in December, 1949, a by-law was passed legalizing discrimination against Negro citizens. Legislation must be enacted guaranteeing Canadians against discrimination of any kind, based on race, colour or national origin.

Indians and Eskimos are deprived of their rights as citizens. They are segregated in their own schools, given no opportunity for employment, and denied the right to vote. All legal disabilities affecting them should be abolished, without depriving them of the protection they now enjoy, until such time as their rights to education, employment, and an equal status with all other Canadians are fully established.

Canadian women must be placed in a position of complete equality with men. This includes the removal of legal disabilities, the right to vote in all elections, Federal, Provincial and Municipal, and the right to employment regardless of marital status, and there must be recognition and application of the principle of equal pay for equal work.

(G) The right to freedom of opinion and expression (Article 16) and the statement in Article 149 which says that rights and freedoms will be without distinction of political or other opinions emphasize the need for vigorous legislative action, to guarantee these rights of political opinion to Canadians. In 1947, 1948 and 1949, a private bill has been introduced into the House of Parliament, the LaCroix Bill, which was patterned after the former section 98 of the Criminal Code. There is now and there will continue to be an uncertainty and fear of the right of political opinion until that right is clearly and simply stated in a Bill of Rights for Canadians. Many of the early conflicts in Canada centered around this basic human right, and those conflicts hampered and restricted the development of this country. All Canadians must be free to join and work for the political party of their choice; they must be free to form political parties; and no Canadian should be discriminated against, or refused employment, or penalized in any way because of his or her political beliefs.

Because of the great need for the assuring of human rights and fundamental freedoms, we would like to place before you certain specific proposals:

(1) That this Senate committee should hold public hearings in provincial capitals; in the chief population centres; and in such places as Asbestos and Shawinigan Falls, Quebec, in Trenton, Dresden, Timmins, and Hearst, Ontario, and in other centres in Canada where violations of human rights have occurred during the past two years. Such a procedure would facilitate your investigations, and would enable interested persons and organizations to submit evidence and proposals to this committee.

(2) That this Senate committee should utilize its power to summon persons and papers and to request Premier Duplessis as Attorney-General of Quebec to appear and to produce all papers relating to the Quebec Padlock Act. We request that this Senate committee take a stand in favour of the repeal of the Quebec Padlock Act.

(3) That this Senate committee should request the Department of Labour to protect the rights of the Canadian Seamen's Union, the legal bargaining agency of the Canadian seamen working on the lakes, and to prosecute the Patterson Steamship Line, the Quebec and Ontario Transportation Company; the National Sand and Material Company; the Algoma Central Steamships, and the officials of the Seafarers' International Union for violations of Canada's labour laws.

(4) That this Senate committee should recommend to the Senate and to the House of Commons that a Bill of Rights be drawn up and submitted to the current session of parliament. To achieve the human rights and fundamental freedoms desired by Canadians, will involve the writing of a new constitution for Canada. Such an undertaking would necessarily be a slow procedure. We therefore suggest that the Senate committee

should recommend to the government of Canada and the governments of the provinces, the immediate action necessary to establish by statute, those rights which will later be embodied in a Canadian Bill of Rights.

Dr. Charles Malik, Chairman of the Social and Humanitarian Committee of the United Nations, in speaking of the Declaration of Human Rights had this to say, "The present Declaration will serve as a potent critic of existing practice in so far as this practice does not measure up to its standard." "The covenant is a convention or international treaty, which like any other treaty, will be legally binding on all the states which ratify it. The signatory states must see to it that their internal situation conforms to their obligation under the covenant."

It is because of our sincere belief that the interests of Canada urgently require that her internal situation conform to the obligations under the covenant, that we have laid these facts before you, in the hope that what we have presented will be of assistance in fulfilling our obligations.

Respectfully submitted on behalf of the League for Democratic Rights.

Co-Chairmen:

Margaret H. Spaulding,
Edmond Major.

Hon. Mr. GOUIN: On page 5 at paragraph 2, Mrs. Spaulding refers to the number of trade unions apparently existing in Quebec which were denied certification. Is there any public report, either of a federal or provincial nature, or by a labour organization, wherein I could get information on that?

Mrs. SPAULDING: Perhaps Mr. Major or Mr. Ferguson could answer that.

Mr. FERGUSON: I think perhaps Mr. Major would be in a better position to answer that, but there is one point in relation to the labour question that I should like to bring before the committee. In referring to the case of the seamen it is disturbing the way an employer can bypass entirely the present legislation. In the case at point we are the certified bargaining agency under the law. Provision is made in the Act that when another union desires to represent employees that they make application for certification. In the case of the seamen, this has not been done. The employers—the Patterson Steamship Lines, the Quebec and Ontario Transportation Company, the National Sand and Material Company and the Algoma Central Steamships—have bypassed the legislation and signed agreements with the Seafarers International Union without going through the due process of law. The Canadian Seamen's Union—and this applies to other such organizations—is now faced with making application to the Minister of Labour for leave to prosecute, and if granted must apply for a long drawn-out and costly court proceeding. Most unions are not in a financial position to carry through such costly court actions, and they should not be placed in a position of having to police the laws of the land as is the case with the Canadian Seamen's Union and the steamship companies. In the meantime, while we are going through this long drawn-out procedure, the employer is forcing the employees to join other organizations as a condition of employment.

Hon. Mr. GOUIN: Mr. Chairman, I take for granted that while I may remain silent about most of what is said in the representations that are being made to us, I do not necessarily accept the remarks which have just been made.

The CHAIRMAN: I do not think anybody will accuse you of that senator. No, this is a public body and it is right and in the interests of justice that we should hear such representations as people desire to leave before us, and that we should give them all consideration.

Now, Mr. Major of the Civil Liberties Union of Montreal is here.

Some hon. SENATORS: Mr. Chairman, it is time to adjourn.

Hon. Mr. KINLEY: It is nearly 1 o'clock.

Mr. MAJOR: Then, I will ask permission to come back later.

The CHAIRMAN: The committee is meeting tomorrow, but we have a very full program and a splendid program, I may say. There is no room for an additional brief tomorrow. We are meetings two days each next week and the following week, but everyone of those days also is full, so just now we are unable to set a date for the hearing of Mr. Major's brief.

At 1 p.m., the Committee adjourned until tomorrow, Friday, April 28, 1950, at 10.30 a.m.

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THE SENATE OF CANADA



PROCEEDINGS

of the

SPECIAL COMMITTEE

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

No. 4

FRIDAY, APRIL 28, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

WITNESSES:

Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa.

Mr. J. M. Magwood, Chairman, National Young Adult Program Committee,
Y.M.C.A.

Dr. R. S. K. Seeley, Provost of Trinity College, University of Toronto.

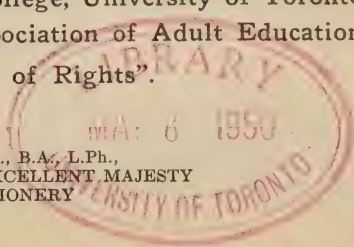
Dr. E. A. Corbett, Director, Canadian Association of Adult Education.

Appendix "A": The United States "Bill of Rights".

OTTAWA

EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for 20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty, and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 18

- (1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.
- (2) Every one has the right of equal access to public service in the country.
- (3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. Moyer,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

FRIDAY, 28 April, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators Roebuck, Chairman; Baird, Grant, Kinley, Petten, Reid.—6.

The official reporters of the Senate were in attendance.

Dr. R. S. K. Seeley, Provost of Trinity College, University of Toronto, Dr. E. A. Corbett, Director, Canadian Association of Adult Education, Mr. F. P. Varcoe, Deputy Minister of Justice, and Mr. J. M. Magwood, Chairman, National Young Adult Program Committee, YMCA, were present.

Mr. Magwood read a letter to the Committee, and Messrs. Seeley, Corbett and Varcoe, the last two of whom were briefly questioned by Members of the Committee, presented briefs.

At one p.m. the Committee adjourned until Tuesday, May 2, 1950, at 10.30 a.m.

ATTEST

J. H. JOHNSTONE,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Friday, April 28, 1950.

The special committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. Roebuck in the Chair.

The CHAIRMAN: Gentlemen, I think we are ready to proceed. Before we call our first witness, I may say that I have two telegrams protesting against the use of the padlock law in Quebec. One is from Dr. James G. Endicott, Chairman of the Canadian Peace Congress, and the other is from Dr. David Rigby, Executive Secretary of the Montreal Peace Council.

Hon. Mr. REID: What law are they protesting against?

The CHAIRMAN: The padlock law.

Hon. Mr. BAIRD: Is Dr. Endicott a Toronto man?

The CHAIRMAN: His wire comes from Toronto, but he vigorously protests against the enforcement of the padlock in some special instance.

We have present with us this morning Mr. F. P. Varcoe, K.C., Deputy Minister of Justice for Canada; the Reverend R. S. K. Seeley, D.D., LL.D., Provost of Trinity College, University of Toronto, and President of the Civil Liberties Association, of Toronto, and Dr. E. A. Corbett, of the Canadian Association for Adult Education. We also expect to have a brief to be presented on behalf of the Young Men's Christian Association by Mr. John M. Magwood, who at present is not here. That is the program for the morning. I understand that Mr. Varcoe is desirous of getting away to his work as soon as possible, and if it is agreeable to the committee and to the other witnesses I will call upon Mr. Varcoe to proceed first.

Mr. F. P. VARCOE, K.C., Deputy Minister of Justice: Mr. Chairman, I appreciate the compliment that this committee does me in asking me to come here in connection with this important reference. At the same time, I should remind you that my functions are purely legal, as legal adviser to the government, and that means of course that I must confine my remarks to matters of law and not deal with matters of policy. I was looking at the terms of reference and I noticed that you really have three things to consider. The motion appointing the committee authorizes it to consider and report on the subject of human rights and fundamental freedoms, firstly, what they are; secondly, how they may be protected and preserved; and, thirdly, what action, if any, can or should be taken to assure such rights to all persons in Canada. Then there is an enumeration of particular rights and freedoms. So you have these three aspects of the problem to consider: (1) what the human rights and fundamental freedoms are; (2) how they may be protected and preserved, and (3) what action, if any, can or should be taken to assure such rights to all persons in Canada.

No. 3, as I understand it, relates to policy, and it is outside my function, as legal adviser to the government, to advise on this. As to No. 1, what the human rights and fundamental freedoms are, I do not intend to enumerate any, but shall confine myself to indicating what kind of things they are, from a legal point of view.

A preface is necessary, in this connection, before considering what is the nature of human rights and fundamental freedoms. The keystone of the arch of the free system of Western democracy is the rule of law, and the essentials for present purposes about the rule of law are that under our system a person

(1) has a legal remedy enforceable by means of impartial courts of justice and law;

(2) may do any act which is not prohibited by law.

This division of the principle of the rule of law into two aspects will be more significant as I proceed. In discussing the nature of human rights and fundamental freedoms, it is essential to realize that the rights are things that are enforceable, thus excluding mere generalities such as freedom from want, freedom from fear, freedom of conscience and freedom of thought.

A right is enforceable by judicial process and therefore connotes a duty on another person or the state to implement the right.

The CHAIRMAN: May I take it, Mr. Varcoe, that you are speaking of the legal definition of rights or the use which lawyers make of that particular term, "rights"?

Mr. VARCOE: Yes.

The CHAIRMAN: And that is the meaning that you propose to attach to it in your remarks?

Mr. VARCOE: That is correct, Mr. Chairman, and I am obliged to you for that interjection, because I had not made that clear.

As I was saying, a right is enforceable by judicial process and therefore connotes a duty on another person or the state to implement the right. If a person, for example, has a right to education, there is a corresponding duty upon the state to provide it and legal procedure to enforce it. The right to own property, the right to work, if this were to be provided by law, the right to security, such as old age pensions, family allowances, etc., fall in this category. So also do such rights as the right to a fair and public trial, the right of an imprisoned person to question the legality of his imprisonment by writ of *habeas corpus*. From a legal point of view, there is little to discuss about them. You simply determine what rights persons should have, then you enact the necessary statutes by the proper federal or provincial legislature.

Incidentally, most of these rights fall in the provincial field—education, conditions of employment, social security, and so on. These are primarily provincial matters.

Fundamental freedoms, on the other hand, from a practical point of view at least, are things of a somewhat different order. Everyone is under our system free to do any act not prohibited by law. Whereas each human right requires a statute to be enacted to create it, each freedom depends on the absence of any statute restraining the individual.

It is true that a freedom calls for a statute to protect it, but taking a practical and not necessarily a philosophical view of the matter, a freedom is an essentially different thing from a right in this respect. It is true that the individual enjoying a freedom may be given a statutory right to enforce it, but the right does not stem from the statute but exists by reason of our legal system which permits an individual to do what he pleases within the law. For example, we have the right of free speech. This is not a creature of statute but is protected and to some extent restricted by statute.

Looking at the enumeration contained in the terms of reference, you will see that to a very large extent they concern freedoms, rather than rights as I have distinguished them. They are to a considerable degree particularized statements of the principle that a person is free to do what is not prohibited.

The CHAIRMAN: Would you call the right of free speech a common law right.

Mr. VARCOE: Yes sir.

Continuing with the first of the three branches of your reference, it is a very good thing to particularize the rights and freedoms for this reason that freedom is exercisable only by the performance of an overt act. The legal system is concerned only with such acts. For example, one might generalize to this effect that all the so-called freedoms can be brought under three heads, freedom of the person, freedom of communication (which would include speech, press, association, etc.) and freedom of religion. But when you come, for example, to particular forms of communication you find that quite different restrictions are necessary. A witness in a court room, for example, is not free to speak anything but the truth. A person riding on a bus is not free to make a speech, a person utilizing the postal service is not free to send communications designed to defraud, and so on. Members of Parliament are restricted by the rules of the House. Principles that would govern speakers at a public meeting are not the same as those necessary where the speech is by radio.

Under our federal system, it is particularly important that we consider the subject by reference to overt acts for the reason that one act may fall to be regulated or protected under provincial law, while another is in the federal field. Postal and radio regulations are examples of the federal jurisdiction in relation to freedom of speech.

In addition, it is to be borne in mind that under our system a single overt act may fall in one aspect in the provincial field and in another aspect in the federal field. Libel is a good example of that, having both civil and criminal aspects.

Now turning to the second branch of your reference, how may the rights and freedoms be protected. As regards the rights, as I have indicated, they are created by statute and enforceable by legal process. Nothing more need be said about them under this head from a legal point of view.

As regards the freedoms, today they are concerned with freedom of the individual as against the state represented by legislature or administrator. Their great protector is, of course, public opinion, but that may be deemed to be, or in fact be, inadequate where a minority is oppressed by a majority. One method of protecting the preserving freedom as between citizens and the state is to amend our constitution so as to put it beyond the power of government or legislature to make laws or enforce laws which deprive persons of their freedoms.

Much discussion has taken place in this country on the question as to the desirability of enacting a bill of rights. Without taking sides in this controversy, I thought it might be useful if I stated very briefly the pros and cons of the controversy as I see it.

For the contrary it is urged that in a parliamentary system, the essential characteristic of which is that Parliament is sovereign, and in the provinces the legislatures, if you impose a bill of rights on the legislature to that extent, you are diminishing its sovereignty.

It should perhaps be noted in this connection that we have not adopted the system of parliamentary sovereignty without exception. As Professor Scott has pointed out, there are several provisions in the B.N.A. Act which restrict the sovereignty of the legislature. Section 133 protects the use of the English and French languages to a certain extent. Section 93 preserves the rights of religious minorities to education. Another section requires a new Parliament to be elected every five years. Sections 53 and 54 require that parliament have control of money bills.

The CHAIRMAN: Annual parliaments are provided for in the act, are they not?

Mr. VARCOE: Yes.

The CHAIRMAN: And annual meetings of the house?

Mr. VARCOE: Yes, sir.

However, these are very limited qualifications and do not, in my opinion, alter the principle that our system of government is based on the sovereignty of Parliament and the legislatures. The Privy Council has over and over again stated that the whole field of legislative power is assigned to Parliament and the legislatures.

A second objection which is made to a bill of rights is that problems which are essentially political in their nature become legal. In the United States, for example, under the provision of the Bill of Rights protecting religious freedom many cases have gone to the courts to test the legality of provisions requiring school children to salute the flag. Some religious groups have objected to this law with the result that several cases have reached the Supreme Court of the United States with quite different results on two occasions. In the latest the law was held bad and Mr. Justice Jackson said:—

If there is any fixed star in our constitutional constellation, it is that no official, high or low, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein.

The transfer of the public controversy from the hustings to the court house is thought by some to be objectionable.

A third objection is that the powers of the courts are enhanced at the expense of the legislature. Almost every constitutional question coming before a court involves to some extent the formation of an opinion by the judiciary and this is an exercise of legislative power. Exercise of *quasi* legislative power by an appointed body whose decision is final and cannot be vetoed is thought by some to be contrary to democratic principles.

The question has been asked by someone: "Will you trust legislators that you can dismiss, or judges that you cannot dismiss?"

On the other hand, in favour of a bill of rights it is argued that very great power indeed is vested in a government under the parliamentary system which now operates by means of strictly disciplined political parties, with the result that there is a tendency for the sovereignty of parliament to become the sovereignty of the executive. The functions of government have greatly changed in dimensions and quality. It is argued that this ever growing power of government calls for constitutional restriction.

Secondly, it is suggested that an adequate bill of rights might in some emergency preserve the unity of the nation. It was only at the conclusion of the civil war that the people of the United States extended their Bill of Rights to the state legislatures and government. A law preventing a government or legislature from exercising a power in relation to a right or freedom which might divide the nation might some day be useful.

A third argument in favour is that such a bill of rights would be a declaration of our political creed that the state is the servant not the master. The written word has greater sanctity than the unwritten. The admiration of the people of the United States for their constitution, I think, very largely centres in the bill of rights contained therein. The people of Canada respect the B.N.A. Act. They might come to venerate it too if it contained a bill of rights with a consequential increase in social and political unity in the country.

In addition to a constitutional amendment, it has been suggested that Parliament itself could, under the head, Criminal Law, or perhaps under the residuary power to legislate for the peace, order and good government of Canada enact a law which as long as it stands unrepealed operates to protect the essential freedoms both in the federal and provincial field.

In order to exemplify this view, I submit the following draft:—

- (1) It is an offence, punishable as herein after provided, for any person wilfully to do any act which has the effect of obstructing or preventing
 - (a) the free exercise of religious worship by any person.
 - (b) The peaceable assembly of any persons.
 - (c) The printing or distribution by any person of a newspaper, magazine or other such publication.
 - (d) Any person from lawfully communicating by speech or writing with any other person

provided that it shall be a defence to any charge hereunder for the accused to establish that the act complained of was lawfully done in the exercise of a right or the performance of a duty pursuant to a valid law in that behalf.

The Criminal Code Revision Commission which, in conjunction with a committee of eight or nine leading criminal lawyers, is now engaged in revising our sixty-year-old Criminal Code, has discovered a very large number of obsolete provisions. So far the Commission has been chiefly concerned with matters of form and other purely legalistic problems. I hope, however, that when the present phase of the Commission's work is completed that it will be able to receive representations from any persons or bodies of persons who consider that new protective measures should be enacted in the Code to secure rights and freedoms.

The plan now is to prepare a bill and submit the same to Parliament and to the public for study. A special committee will, no doubt, be set up, possibly a joint committee of the two houses, and representations can be made to that committee.

Turning to the suggestion that we establish a civil rights branch to be administered by the Department of Justice, as has been done in the United States, I suggest that this requires careful consideration. The enforcement of the criminal law is, by the British North America Act, assigned to the provincial authorities. It is in this field probably that most complaints would arise, either on the ground that the criminal law is not being enforced or that it is being oppressively enforced. Receipt of complaints and their investigation by a federal department would mean, in effect, that the federal Department of Justice would to some extent undertake or supervise the criminal law enforcement.

Turning to some of the questions that you submitted in your letter to me: the first one was, what rights and freedoms do we now enjoy? I have not attempted to answer that, but I suggest that possibly it would be simpler to ask the question, what rights and freedoms do we not enjoy?

There is another question in your letter, No. 3, referring to jurisdiction.

The CHAIRMAN: Both types of information might be very useful, Mr. Varcoe. A statement of the liberties that we now possess is not to be discounted, because those liberties are very great, and we in Canada are very proud of them. We think that perhaps we have a greater measure of that kind of thing than any other nation on earth in actual practice and in work-out.

Mr. VARCOE: Well, I do too, but I was thinking, sir, that possibly, if you enumerated those that you concluded we have not got, it might be a helpful approach. Let us start by saying that we have a very large measure of freedom. That is limited by the fact, let us say, that there are some freedoms that we have not got. Now what are those, and let us see if we can afford to acquire those rights and freedoms. In other words, let us see if we can extend the field. That was in my mind.

Well, then, you asked a question about the jurisdiction of the Supreme Court. I think possibly I could answer that by saying that a year or so

ago the jurisdiction of the Supreme Court was very considerably extended, particularly in the field of criminal law, and I do not know at the present time of any change that should be made to give the court wider jurisdiction.

The CHAIRMAN: Well, my question was this—I think I had better get it on the record: “There have been a number of comments about the limitation of the jurisdiction of the Supreme Court of Canada, and on two occasions witnesses have advocated that the jurisdiction of the Supreme Court be extended to cover violations of human rights and invasions of fundamental freedoms. Would you tell the committee what are the limitations of the jurisdiction of the court to deal with cases involving such rights and freedoms? And could its jurisdiction be extended if you find that necessary?”

Mr. VARCOE: Well, I think, sir, that the extension to which I referred has cleared up that problem. That was my impression. It was my intention at any rate.

The CHAIRMAN: The extension to which you refer, what was that?

Mr. VARCOE: I have not got the Act here.

The CHAIRMAN: In the recent amendments?

Mr. VARCOE: Yes. At the session before last there was an extension of the jurisdiction to permit, at any rate by leave of the court, appeals such as those which were rejected in the case of the Witnesses of Jehova on a prior occasion. So I think that that problem has been dealt with.

Now, the next question—I do not want to take up too much of your time—

The CHAIRMAN: We are all right, I think, in the matter of time, Mr. Varcoe.

Mr. VARCOE: I have dealt with the question about the civil rights branch of the Department of Justice. The fifth question was this: “In the Canadian Citizenship Act, the certificate of Canadian citizenship declares that the person naturalized is entitled to all rights, powers and privileges and subject to all obligations, duties and liabilities to which a natural-born Canadian citizen is entitled or subject. What are those rights and duties?”

Now the direct effect of the citizenship certificate is that it confers upon the holder the right of entry into Canada under the Immigration Act. Secondly, only a Canadian citizen can have issued to him a Canadian passport. So that he acquires two direct rights: one, to enter Canada; the other, to be protected by Canada when he is abroad. Indirectly, however, he acquires other rights. He acquires them because he becomes, by the issue of the certificate, a British subject. This gives him the franchise, the right to own shares in British ships, and I think that if an inquiry were made it would disclose that there were other statutory rights conferred upon British subjects. I have not had an opportunity to make any research in this respect.

As regards duties, the only one that occurs to me is this, that a British subject may be required compulsorily to serve in the military forces of Canada if Parliament so enacts. I think there is also a distinction between the position of a British subject and an alien with respect to the crime of treason committed outside Canada. You remember the case of Roger Casement. He was convicted of treason, the acts having been committed outside of the United Kingdom, in Germany, and it was only because he was a British subject that he could be tried in Britain for that offence.

The CHAIRMAN: “Lord Haw-Haw” comes under the same category?

Mr. VARCOE: Yes, sir. That is the end of my submission.

The CHAIRMAN: Well, we are certainly grateful to you, Mr. Varcoe, for spending this time and assisting us in this rather difficult task that we have undertaken. Have some of the committee some questions to ask Mr. Varcoe? We have a few minutes yet.

Hon. Mr. KINLEY: Something which has alarmed me for some time now is the anxiety in connection with the Civil Service to get a blanket legislation so that they can put everybody in the net and keep them there. I have in mind what they call the Fish Inspection Bill. This, of course, is not really an inspection bill at all but a bill for discipline. Under this bill, if a fisherman is accused of something he is deemed to be guilty. The fish inspector arrests him and puts him in jail. The fish inspector has all the power in the world. He can seize the fish and forbid the sale of it, and do practically whatever he likes about it. Just because a man has a bad hoop in a barrel or because he has some bad fish, it does not mean he should be able to take the fisherman and put him in jail, accusing him of a violation and making him prove himself innocent. That is hardly in keeping with what we consider to be our rights.

The CHAIRMAN: Mr. Varcoe, is the principle pretty well established that a man is innocent until he is proven guilty in our law in Canada?

Mr. VARCOE: There are two or three statutory provisions where the law is otherwise. I think Senator Kinley is right about the one he mentioned under the Fisheries Act, where the onus is placed upon the defendant to prove that he did not commit the violation. I may say that this usually occurs where the accused is the only person who knows the facts. That is the general principle. I do not say that it is a good principle, but it is the general principle. For example, a person is driving a motor car and is charged with doing so without an operator's licence. Now, it becomes quite a task for the police to prove that he has not got an operator's licence. The driver is the man who knows that he has or has not got the proper licence.

Th CHAIRMAN: The law provides that he shall produce it if he is called upon to produce it.

Hon. Mr. PETTEN: Is that not a matter of record?

Mr. VARCOE: Yes, but you might have to search records for weeks. For instance, a man might be charged in Mattawa with driving a car without a licence, and it would be a rather trivial matter to bring a witness all the way from Toronto to Mattawa to prove the licence. Therefore, it is not thought unfair in such cases that the onus is put on the person to produce his licence if he has got one.

Hon. Mr. KINLEY: That is all right because a man either has it or he has not got it. That is not the same as the case of the fish inspector. It occurs to me that the enforcement of the law should be placed in the hands of intelligent people who have been educated in the enforcement of the law. I am thinking of such people as the Mounted Police. I do not think it is right, however, to allow every fish inspector to go about putting fishermen in jail because they have some rotten fish. I do not particularly mind him seizing the fish but just because he is a fish inspector I do not think he should be allowed to have a man put in jail. That is not justice. You take the poor maritime fishermen along the coast. They do not get much out of life but they think that they live in a free country, and when you get this sort of enforcement of the law, which is undoubtedly drastic and unfair, it kind of shakes their whole confidence as to whether this is really such a free country after all. It is better for one guilty man to go free than for an innocent man to be punished.

Hon. Mr. GRANT: It is better for ten guilty men to go free than for one innocent man to be convicted.

Hon. Mr. KINLEY: Well, put it that way if you wish. I remember saying to one departmental official, "This is not fair. You should not do this". He replied, "Oh, well, you can't get a conviction unless you do it. That is the reason it is so effective and so efficient". Well, that may be so but the liberty of the subjects of this country is something to be considered, and I object strenuously

to this sort of thing. I do not like to see a man presumed guilty until he proves his innocence. Our Justice Department is trying to maintain the freedoms in this country, but when officials write this sort of law into our statute books it infringes upon these very freedoms.

The CHAIRMAN: I protested against this Fisheries Bill. I thought it was a villainous thing.

Hon. Mr. KINLEY: They have the same thing in the Agricultural Act. They said, "Well, it has been in the Fisheries Act for ten of fifteen years". I maintain that that is no reason it should continue. When I was a young man there was only one fish inspector in the whole district and he did all the work. Now they have twenty inspectors who can run around arresting people. In the old days if they put a man in jail the fishermen would take some action. I have seen them throw a Mounted Policeman's automobile over a cliff. When this sort of thing occurs in a fishing district it is bad on the morale of the people and for the whole system of government. It is not right to allow officials to over-extend themselves and encroach upon the rights of the people.

The CHAIRMAN: Making public officials masters instead of servants of the public.

Hon. Mr. KINLEY: Yes.

Hon. Mr. PETTEN: That is exactly the thing I object to.

The CHAIRMAN: Thank you very much, Mr. Varcoe, for being with us today. I believe we are ready to hear Mr. John Magwood of the Young Men's Christian Association.

Mr. J. M. MAGWOOD: Mr. Chairman and honourable senators, I should like to say a word in the way of an introduction. The Y.M.C.A. is in the preliminary stages in the consideration of this matter and we have not yet come into grips with the details. What I have to present is a letter of the preliminary considerations; it is not a brief. This letter is addressed to Senator Arthur Roebuck, Chairman of the Senate Committee on Human Rights and Fundamental Freedoms, Ottawa, Canada.

Honourable Sir,

The Young Adult Program Committee of the National Council of Y.M.C.A.'s in Canada, in session in Ottawa, has been authorized to express the views of the Canadian Y.M.C.A. upon the proposed Bill of Human Rights and Fundamental Freedoms. While time did not permit consultation with representative and responsible members of a movement with a membership of approximately 83,000 in 92 associations across Canada prior to the session of the Senate Committee, the principles involved are sufficiently clear to warrant the commitment of the Canadian Y.M.C.A. to an endorsement of some form of legislative enactment to legalize in Canada the United Nations Declaration and Covenant on Human Rights and Fundamental Freedoms.

As to the form that this enactment should take, the Y.M.C.A. does not at the moment feel competent to express itself. No doubt further study will be given to the matter of implementation generally, and the question as to whether the required amendment to the British North America Act should be passed by the Parliament at Westminster, on joint address by the House of Commons and Senate, or follow a resolution passed at a Dominion-Provincial conference, or be initiated at Ottawa, with or without provincial enabling legislation, following an imperial enactment providing for future amendment of the British North America Act by the Parliament of Canada.

As to the content of the bill itself, the Y.M.C.A. would like to reserve opinion. It is in this area that we propose to consult local Y.M.C.A. groups that have the time and interest to explore the ramifications of the matter in

detail. It is assumed that ample time will be taken before the final form of the bill is settled, to enable full discussion by the widest possible range of Canadians to ensure the overwhelming sanction of public opinion without which any law is valueless; and also to leave time to work out the constitutional problem and to ensure full consideration of the covenant of Human Rights and Fundamental Freedoms which has still to receive the approval of the Economic and Social Council of the United Nations in its final form.

The Y.M.C.A. is grateful to the Senate committee for awakening its sense of responsibility to assist in the creating of an informed opinion on this matter among Y.M.C.A. members across Canada. And the Y.M.C.A. commends Senator Arthur W. Roebuck for his timely exercise of initiative in bringing the matter before the bar of Canadian public opinion.

Respectfully submitted,

JOHN M. MAGWOOD,
*Chairman, National Young Adult
Program Committee.*

The CHAIRMAN: You are giving me more credit than is coming to me, Mr. Magwood, but it is very pleasant, and I thank you. Your brief contradicts your statement that you have not given much thought to this subject, for in a few words you have demonstrated that you have given a good deal of thought to it. Your brief will appear in our records and, I can assure you, will have our careful consideration.

Now, gentlemen, we have the Reverend Dr. Seeley and Dr. E. A. Corbett. I would ask them to decide between themselves who should appear first. I see that Dr. Seeley is rising, at Dr. Corbett's suggestion. I would point out again that Dr. Seeley is Provost of Trinity College—that is the position from which he makes his living—and President of the Civil Liberties Association, of Toronto. He does not make any living out of that position, but I take it that it is in that second capacity that he appears here today.

Reverend R. S. K. SEELEY, D.D., LL.D.: Mr. Chairman, I do not know in what capacity I am appearing here.

Hon. Mr. KINLEY: Trinity College is connected with the University of Toronto?

Dr. SEELEY: Yes.

Hon. Mr. KINLEY: It is an Anglican College?

Dr. SEELEY: Yes.

Mr. Chairman and honourable gentlemen, the Chairman's remarks raise at the outset the point of why I am here, and I wish to make it very clear that I am not the official spokesmen of any group of people. I take it that you invited me, sir, because I happen to be the President of the Civil Liberties Association, but they have already presented their brief to you and it is not my purpose to reiterate that brief. It seems to me that I am here in a very humble capacity, to try to set before you some of the ideas that are going on in the minds of people connected with various groups in which circles I move, because the action of the Senate in setting up a committee on human rights and fundamental freedoms is the cause of a great deal of satisfaction both to individual citizens and to groups of people. I should like to try to put forward the views of people in three not inconsiderable sections of the community, namely, the Christian churches, the universities, and those ordinary citizens who have a special care for civil liberties, the kind of citizens who align themselves with and become members of the Civil Liberties Association.

I am perfectly aware that representatives of two of these groups have presented briefs to you. I know that the Social Service Council of the Church of England in Canada has presented a brief to you, and I know that the Civil Liberties Association has presented a brief, and I shall make no attempt whatever to reiterate the details of their arguments, but rather I shall attempt to emphasize the principles which underlie their arguments and to point out why it can reasonably be expected that these groups of people would support wholeheartedly any action which is taken by this committee and by the Senate in this whole matter of human rights and fundamental freedoms.

First of all, from the point of view of the Christian churches. Here let me say that I do not want to make any attempt to preach a sermon to this committee, but I thought it might be useful to remind you of the principles on which the Christian churches as a whole would support this matter in which you are concerned. After all, the vast majority of the population of Canada is Christian, at least in name, and the whole ethos of Canadian life is derived from the tradition of Christian civilization, and while respect for other religious views is essential to the Canadian way of life and is indeed basic to this very subject which we are now considering, the fundamental principles on which so large a majority of the Canadian population base their lives are relevant to the nature of our Canadian constitution, since in a democratic country, I suppose, the constitution must reflect the will of the people.

Now it is indeed on the basis of Christian doctrines and the Christian values which have been accepted by our society that we can justify a declaration of human rights against those whose systems of thought and whose policies deny to the individual any rights of his own. It appears that usually a declaration of human rights assumes that human rights are desirable as an axiomatic proposition, that it does not go into an inquiry of why it is assumed that human rights are desirable. And it appears to us as axiomatic only because we have absorbed into our corporate thinking the Christian doctrine of man on which those human rights are based. According to this Christian doctrine, every individual man is of supreme value in the sight of God, for he is made in the image of God, is called to be a child of God and has as his heritage eternal life; and every man must therefore have freedom to respond to the call of God and be given opportunities whereby the whole of his personality may be fully developed to glory of God and in the service of God. Without these elementary human rights man cannot use completely and to the full the talents with which God has endowed him. For those reasons, you see, a Bill of Rights is consonant with Christian principles and would receive the wholehearted support of the Christian people of Canada. The areas of freedom which are envisaged by these principles have already been set before you in the brief submitted by the Department of Social Service of the Church of England in Canada—have you had that brief before you yet?

The CHAIRMAN: If it has not come before us yet, it will come.

Rev. SEELEY: I have seen that brief, and I am not repeating what it says. I know if it is not in your hands it will be in your hands.

It quotes from the Lambeth Report. That is the report of the bishops of the Anglican communion throughout the world, assembled at Lambeth, in 1948. The section dealing with human rights gives four general headings as to the areas in which human rights should be protected according to Christian principles, namely freedom of personal security, freedom of various social and economic rights, freedom of speech, discussion and association, and religious freedom. That is quoted from the Lambeth Report for convenience but similar statements can be found in other declarations which have been made by world meetings of churches, such as the meeting at Madras in, I think, 1938. It is one of the glories of the Christian church that it has in recent years been ready

to suffer persecution and martyrdom in certain areas of Europe in defence of these fundamental rights where they have not been guaranteed by constitutional methods.

It is important to point out that this christian basis gives the answer to one of the major problems which is inherent in this whole question of human rights. It is frequently asked whether man's rights can be defined and assured without consideration of man's duties and responsibilities. This point has been touched on in the brief presented by the Association for Civil Liberties which quotes Dr. Malik's defence of the irreducible humanity of man. The christian position would go further. For it maintains that these human rights are basic in order that many may have opportunity to achieve his destiny and to respond to the purpose of his Creator.

Now it is manifestly impossible for the state which represents people with widely diverse views of man's destiny to include within a bill of rights a statement of Human Responsibilities in terms of man's destiny and purpose. That is the task of the church and the church is willing and is indeed compelled by its very nature to take up this task as something which is complementary to the action of the state. It cannot, however, fulfil this task of setting before man his responsibilities unless the freedom to accept these responsibilities is guaranteed to man. We envisage then the state and the christian church working in cooperation, the state guaranteeing the fundamental rights of man and the church laying before him the responsibilities which issue from these rights. Were this committee therefore to recommend the setting up of a bill of rights within the constitution, it would be assured of the goodwill of christian people in this Dominion, and it would be safe to assume that the churches would regard such a bill as further encouragement to them to discharge their task of proclaiming human responsibilities and duties.

Secondly there is another much smaller but nevertheless very influential section of the population which would strongly favour the establishment of a bill of rights. It is significant that in order to establish a totalitarian regime Adolph Hitler found it necessary first of all either to destroy or to silence the churches and the universities. The tradition of freedom associated with universities is an ancient one, and indeed freedom is integral to the pursuit of truth. It is not possible to be faithful in the pursuit of truth in any area of knowledge if one is exposed to restrictive pressures. A scholar must be free to follow the light of truth without fear of where his investigations will lead him. He must also in the pursuit of truth have free access to all the evidence which is available in his particular field. In this connection Article 16 of the draft articles is of particular interest and significance.

Your attention has already been drawn to the fact that books and periodicals have been banned from entry into this country by the Department of National Revenue without right of appeal. I am not aware that any literature so far banned has been of a nature that would be of value to scholars, but the principle here involved is a dangerous one. If literature which is allowed free circulation is restricted to literature of a certain kind, or alternatively excludes literature of a certain kind, there is no longer any guarantee that our scholars are free and unfettered in the pursuit of truth. Moreover, the scholar is under obligation to present for the consideration of his students all points of view in order that those who are engaged in the pursuit of knowledge may have full opportunity of reaching independent conclusions. This involves the right of freedom of opinion and expression. There are cases when this freedom has not been vouchsafed to those within our universities.

I would not maintain that there have been as yet in this country any glaring instances of abuse resulting in the dismissal of fearless scholars. I think

it can be maintained that scholars have been penalized for fearless expression of opinion and I am sure that there are instances where fear has silenced scholars and made them hesitant and unwilling to give voice to their opinions. It is not, however, so much as a redress to existing evils that this article or other articles are important. It is rather as a safeguard against situations which might arise and these not as remote contingencies but as repetition of circumstances which have arisen in other places.

If our universities were ever allowed to become places which represented some particular point of view which was dictated by anything other than a free pursuit of truth, the last stronghold of independence would be lost and the Dark Ages would again be upon us. It is the experience of centuries that right thinking comes as the result of diversity of opinions, or as one eminent scholar has put it, truth only emerges out of controversy. Any suggestion that there is one set of facts that is true over against all others or any one form of interpretation of facts which is right, is clean contrary to the whole stream of tradition in higher education. Sir Walter Moberley in his outstanding book "The Crisis in the University" has spoken of the distinctive responsibility of a university to be "a place where the criticism and evaluation of ideas is continually being carried forward, where nonsense can be exposed for what it is and where the intellectual virtues rooted in sincerity of mind are being fostered and transmuted". Thus if a university is to fulfil its function it may very easily find itself in a position where exposing nonsense for what it is involves conflict with points of view which the state or some influential body within the state is anxious to propagate. Unless the university has complete protection to speak fearlessly, the cause of truth must inevitably suffer. Here again a responsibility is involved. Academic freedom does not mean academic licence, although it has sometimes been so interpreted. To quote Sir Walter Moberley again; he used the phrase "responsible independence". Freedom is never an absolute thing; it always stands in relation to a higher service. The pursuit of truth lays upon the scholar its own standard of integrity. Here again the enforcement of responsibility does not seem to me to lie with the state. It is something which a university must itself inculcate in its members. It is, however, vain to inculcate a sense of unremitting service to truth unless freedom to enlist in that service is ensured as an inalienable right.

While these observations which I have made in the main illustrate the concern of universities with one particular section of the suggested bill of rights, they should also be sufficient to show the concern of universities with all basic human rights and freedoms as the essential ingredients of the good life, and give assurance of the support of universities to any measure which will ensure the safeguarding of these rights and liberties.

In the third place, I would like to say something from the point of view of just the ordinary citizen who is concerned with the civil liberties. From this point of view it seems to me that the most desirable object to secure is the elimination of the uncertainty and bewilderment which surrounds the ordinary citizen in this regard. As has already been pointed out to your committee, it is difficult for the layman to discover from the various scattered sources at his disposal, and not at his easy disposal, what his rights as a Canadian citizen are. One cannot but be impressed and alarmed by the list of instances cited by the Civil Liberties Association of the infringements of human liberties which have occurred in recent years in this country. One finds it impossible to believe that these are consistent with any considered policy of liberty which governs this Dominion. Rather they seem to indicate an accumulation of instances of what can happen when there is no considered policy clearly and definitely expressed. Or more accurately still, it would appear that they are examples of the dangers

inherent in our decentralized system of government, which, valuable in itself, needs as its complement some clear expression of uniform agreement as to the basic principles on which our system of government is based.

The ordinary citizen desires to be assured that his worth as a person is the fundamental principle from which legislation springs, and that legislation is designed to protect his worth from encroachments. Our country is one into which many people are seeking entry as a refuge from the infringements of personal freedom which they have experienced in their native lands. They expect that within our borders they will find freedom to express themselves as they really are, that they will be able to live without fear, and that they will be able to pursue their lives independent of particular ideologies and free from external pressures. And we have given them cause to expect to find these things, because we assert that we are a freedom-loving people, as indeed we are. And yet for all the measure of freedom which we enjoy—and you, sir, have remarked today that we probably enjoy it in a greater measure than any other country in the world—it remains possible for anomalies to arise and injustices to exist, and these most frequently, it would seem, among those minorities to which these people who are seeking entry to our country must of necessity belong. It is true, and we realize that it is true, that these anomalies and injustices are the exception rather than the rule; and indeed the majority of our citizenry are unaware that they are taking place. But incidents, however few, become precedents unless there is some central core of right to which we can appeal. The infringements of liberties that go unchecked all increase the total sum of anxiety and fear, and thus sap the vitality of the whole population. These things are gradual, and they tend to pass unnoticed; but nevertheless it is to my mind significant that the infringements of human rights which are most often quoted have all occurred within recent years. And the reason for this seems to me to be that there have entered into the modern state two new factors that have made a radical difference to our mode of thinking and to the nature of government.

We are living in an age when rapid action is becoming increasingly necessary. That is one of the characteristics of the scientific age, from which I think there is no escape. And when events are in general fast-moving we develop almost of necessity the habit of acting without due consultation. We have to act too often arbitrarily. And that is the very point at which totalitarianism is likely to begin and does begin. It is inevitable that in times of emergency a government must impose controls and limitations and act in such a way that the minimum of delay is involved. There is to my mind a very real danger lest the times in which we live be considered as a permanent period of emergency, resulting in the imposition of controls and limitations which become a permanent feature of our community life. Against such tendencies there is no real safeguard but a clear-cut declaration of the inviolable rights of the individual.

The other new factor which has entered into the modern state and altered the nature of society is the advent, or rather the increase, of the social services. Traditionally the government of a country exists in order to defend the country against external aggression and to maintain peace and good order within the community. During the last seventy-five years or so we have envisaged the government as having further functions than these; and in particular we have looked to it to provide social services and social protections of various kinds; and in large measure or in small we have begun to think in terms of the welfare state. Now this kind of social planning undertaken by governments involve, as Mr. Hugh MacLennan has pointed out in a recent article, the necessity of placing ever-increasing power in the hands of governments, bureaucracies, corporations, armies and police. That, I think, is an inevitable tendency, and I doubt if there is any way of increasing the social services of modern society without it. We do not in general question the value of these services to the community, though we may have differences of opinion as to the extent to which they should be

developed and the extent to which voluntary social agencies should be thereby limited. But nevertheless the dangers involved in these are obvious, and the result is that government at all levels is bound to be more and more concerned with the private lives of individuals.

If it assumes responsibility for their welfare it can with some justification claim some measure of control over their lives. The danger arises when government in any of its forms tends to exercise the functions of the courts, and when in the name of efficiency personal liberties are subordinated to standardized practices. It is at this stage that it becomes imperative to have certain rights and freedoms before the law expressed in a manner which is uncontroversial.

The final section of what I have to say is concerned with the question of whether a Bill of Rights is the solution to the problems which confront us in the maintenance of individual human freedoms. That these should be maintained no right thinking person can deny, though the precise extent and nature of these freedoms will ever be a matter of dispute. The real difference of opinion lies in the manner of their maintenance. Here we fall between the traditions of the two great powers that so greatly influence our national life. Great Britain has no Bill of Rights; the U.S.A. has. Which patterns should we follow? It is perhaps not altogether true to say that Great Britain has no Bill of Rights. It was established early in her nationhood in the form of Magna Charta, the spirit of which has become so ingrained in the life of the nation that no further declaration has proved necessary. But the positions are not entirely similar. The divided powers of government, the heterogeneous nature of the population, the vast distances which separate the different parts of our country, all create different situations which demand different ways of meeting them. To suppose that the mere introduction of a Bill of Rights into our Constitution would solve our problems is an attitude of mind against which we must set our faces. True freedom cannot be embodied in law and transcends legislation. It involves the acceptance by the total community of common ideals and common responsibilities. Nonetheless, it is a fact of experience that law has an educative power. Once a law is formulated, people automatically tend to adopt its norms and to accept its standards. History has shown, for instance, that Declarations of Rights at the time of the French and American Revolutions had a profound effect upon subsequent events. Without a program of education such a Bill of Rights would lose most of its effective power, but without a Declaration backed by legal validity, education by itself has little permanent value especially when we take into account the new features of modern community life to which we have already referred.

The World Council of Churches in its inaugural session at Amsterdam in 1948 had this to say about the jeopardy of freedom:—

The tensions which agitate present day society, both domestic and international, threatens the existence of human rights and freedoms. Under the necessities of war peoples in every free community yielded to their governments individual rights which in times of peace they were disposed to guard with zealous care. Efforts to recapture the enjoyment of personal freedoms encounter various obstacles. When disrupted economies have followed the devastation of war the preservation of life has made unavoidable the continuation and at times the strengthening of government controls. The inability of the major victorious powers to adjust their differences has cast a shadow over every land. Without measurable assurance of a peaceful world the traditionally free countries are reluctant to return to their accustomed ways of freedom. Totalitarian governments do little to liberalize their domestic practices and in fact seek to extend their view of life to foreign lands.

This is a graphic and I think accurate picture of the rapidity with which freedom can be cast out of the life of a nation. Canada today is regarded as a nation that can give a lead in international affairs and whose stand against totalitarianism is one of the bulwarks of the world forces of democracy. A Declaration of Rights is one of the standards by which a nation is judged by other nations. The introduction of such a Bill of Rights into the Constitution of Canada at this juncture of world affairs would not only be of lasting benefit to the Canadian people. It would give fresh hope and courage to those nations of the world which love freedom and are threatened by tyranny.

Those, Mr. Chairman, are just some observations which I make about those areas of which I have spoken, and I trust that they may be of some value to your committee in the expression of opinion of the ordinary citizen.

The CHAIRMAN: Thank you, Dr. Seely. You have expressed in noble words the thoughts that have been passing through our minds, but which we have not expressed as yet in phraseology as you have. You have assisted us very greatly and I thank you for coming. I am sure the committee joins with me unanimously in my expression of gratitude for your splendid and learned statement. It reflects great knowledge and philosophy and will help us in our thinking.

Now, gentlemen, our last witness of to-day is Doctor E. A. Corbett, Executive Director of the Canadian Association for Adult Education.

Dr. E. A. CORBETT: Mr. Chairman and gentlemen, first let me say that I consider it a great honour to have been invited to appear before this important and distinguished committee. Although I am appearing here as an individual, as Senator Roebuck asked me to do, I think it might be helpful if I told you just what I am and what I do.

The CHAIRMAN: Yes, please.

Dr. CORBETT: I have been for the past fourteen years Executive Director of the Canadian Association for Adult Education. This organization came into existence in 1935 and received its Dominion charter the same year. Its purpose is to serve as a national clearing house and co-ordinating agency for universities, departments of government and voluntary agencies at work in the field of adult education throughout Canada. The society has been supported, since its inception, by annual grants from the Carnegie Corporation of New York, from provincial Departments of Education and private subscriptions. It is now widely accepted throughout Canada, and we have what might be called a "People's University," with an enrolment of some thirty thousand people, receiving weekly supplies of study materials from us on a wide variety of subjects.

Adult education has been described as "Imaginative Training for Responsible Citizenship." I believe it can be used as a powerful medium for creating the atmosphere in which a democracy can live and work. The methods used in adult education are informal and the emphasis is placed on the group rather than the individual as a unit of educational experience. For that reason, among others, we warmly welcome the appointment of your committee. Articles 16 and 17 of your terms of reference concerning freedom of assembly, freedom of opinion and expression—the right to seek, receive and impart information and ideas through any media and regardless of frontiers—deal with the very life-blood of an organization such as I represent. It was for that reason that last year, at a world conference on adult education called by UNESCO and held at Elsinore, North of Copenhagen, in Denmark, at which I was present as Canadian representative, delegates from thirty countries unanimously approved the United Nations Declaration of Human Rights and pledged our support of a world-wide study of its provisions. This action was taken in the firm belief

that without wide acceptance and of belief in the fundamental freedoms adult education as a factor in international understanding and goodwill could not possibly function.

There are a number of reasons why I personally believe that Canada should now have a bill of rights embodied in her constitution. I would emphasize, and I want it understood that this brief presents my personal views, rather than those of the association which I serve. I assure you that I feel certain that the thirty or forty thousand people I represent, as members of this association, would give their support in principle to what I have to say.

First, because in the United Nations Universal Declaration of Human Rights the member nations have found common ground on which to pledge their beliefs in those basic human rights which are the foundation of freedom, justice and peace in the world. I think Canada should now take action to give substance to her acceptance of that declaration of faith and purpose. Canada has finally accepted the responsibility for the right to amend her own constitution, by providing that a Canadian court shall be her final court of appeal. This would therefore be an appropriate time to make explicit those basic concepts of freedom of speech, and religion, freedom of assembly and of the individual, which are implicit in the British North America Act.

We have plenty of evidence in Canada in the past few years that basic rights and freedoms can be threatened. There is no need at this time for me to enlarge upon that subject. This committee is well aware what those threats are and where they have taken place. I would like, rather, at this time to call attention to the main areas in which a constitutional bill of rights for Canada would be of incalculable value.

First, in the field of adult education. I think it is true that the world educationalists have come to regard this as rather a new medium. I do not like the term "adult education"; I prefer public education at the adult level. At any rate, it is a medium that has been developed throughout the world within the past twenty five years. It has come to be regarded as a necessary element in any programme of citizenship training, and as a valuable weapon against those subversive ideologies which threaten to destroy the democratic way of life.

The CHAIRMAN: Hear, hear.

Dr. CORBETT: The capacity of a well organized ably directed programme of adult education to awaken and sustain a sense of responsibility for the community, and for the nation, has been demonstrated in hundreds of communities in Canada in the past years. Most of us have heard, I expect, of the famous St. Francis-Xavier programme of adult education. Dr. Coady, of St. Francis-Xavier was the great pioneer in this field and is president of the association I represent. Dr. Coady was recently called to appear before the Economic and Social Council of the United Nations to describe the way some 100,000 fishermen and farm people of the Maritime provinces have found economic security and have mastered their economic destiny through a well directed programme of education for economic and social action. The story of improved schools, better medical services, community cooperation in programmes of self help through group study, group thinking and group action, is too long to recite here. But it can readily be seen that for this kind of activity there must be no barriers to assembly, exchange of opinion, interchange of study materials, books and films and other aids to learning. Senator Rupert Davies, speaking in the Senate last year said:

Let me for a few moments deal with Article 16 in which I am particularly interested. We were told that in 1948, under tariff item 1201, forty-five books and twenty-three newspapers and magazines were refused entry into Canada, while in 1949, eighty-one books and twenty-two magazines and newspapers were refused admission.

I object strongly, he said, to any officer of the Department of National Revenue in charge of censorship, deciding what are the right and proper books for Canadians to read. This is a most dangerous power to put into the hands of an anonymous member or members of a department of the government.

I feel that Article 16 of the proposed Bill of Rights seeks to deal with this problem of censorship, and I want to point out how necessary such a human right and fundamental freedom as that outlined in Article 16 is in Canada.

I recognize the need for a measure of censorship of books and films but share the conviction of Senator Davies that such censorship must be in the hands of highly qualified people.

The CHAIRMAN: But they should be thoroughly guided by certain general principles as well?

Dr. CORBETT: Yes.

The CHAIRMAN: And not left to the caprice or opinion of the censor.

Dr. CORBETT: That is correct. In passing, it may be of interest to you to know that at the general meeting of UNESCO which will be held in Florence, beginning May 22nd this year, there will be submitted an international agreement on the importation of educational, scientific and cultural materials. In introducing this subject Dr. Torres Bodet says:

No protectionism could be more short sighted than that which "protects" the minds of people from the ideas and attainments of the rest of the world.

Under this agreement, if approved—and it probably will be—organizations would be free from tariff restrictions in importing films, film strips, microfilms and recordings of an educational, scientific or cultural character. Newsreels would also be allowed to enter duty-free.

In addition, scientific instruments or apparatus for educational or research purposes, if they are not manufactured in the importing country and if consigned to approved institutions, would be allowed to move across frontiers without payment of duty. If this is done, it would seem to me to solve the problem.

Hon. Mr. GLADSTONE: Do you say that the censorship of magazines and books is not in competent hands?

Dr. CORBETT: I am quoting Senator Davies, who apparently seemed to think it was not in competent hands.

Hon. Mr. GLADSTONE: I would question just where you might get more competent hands; however, I would think probably there should be provision for an appeal.

Dr. CORBETT: Yes. Our point is that wherever the authority lies it should be in the hands of people who are well qualified to impose the censorship.

Hon. Mr. GLADSTONE: I think it is generally admitted that certain magazines and books seek admission, which are now properly barred.

Dr. CORBETT: Yes.

Hon. Mr. KINLEY: Do you still think censorship is salutary?

Dr. CORBETT: Yes, in many instances.

Hon. Mr. KINLEY: It keeps out the dirt. You skim everything to keep the dirt out of it.

Dr. CORBETT: Yes, exactly.

Hon. Mr. KINLEY: I do not know why the minds of the people should be exposed to dirt.

Dr. CORBETT: Yes, I approve of a measure of censorship.

The CHAIRMAN: A person who goes to a moving picture should not run the risk of seeing an off colour film.

Hon. Mr. KINLEY: Especially the children.

The CHAIRMAN: A man should be free to send his children to a theatre, knowing that some adult has had the responsibility for looking at the programme, and assure him that it was all right. The problem is that we have not laid down principles to guide the censor. He should be permitted to remove the filth from films and things of that kind. However, I am not prepared to say what the principles should be. He should not be a dictator in any sense; he should be a social administrator and have a clear statement as to his duties.

Hon. Mr. GLADSTONE: I am not a "movie fan", and I am not competent to pass on whether the censorship of the movies is satisfactory.

Dr. CORBETT: I think in the main the provincial censorship of movies is in pretty sound hands.

Hon. Mr. GLADSTONE: But I would question the censorship as regards the publicity that is permitted, both over the entrances to motion picture houses and in the newspapers.

The CHAIRMAN: Excuse us, Doctor, for this interruption.

Dr. CORBETT: I was going on to say that it would, in my opinion, be of great value in carrying out nation-wide adult education activities if we could place in the hands of our people a bill of rights which is something more than a statement of moral principles, a document with teeth in it, carrying with it the assurance that the basic human freedoms in Canada cannot be violated. It may be pointed out that since freedom of speech, of peaceable assembly, of discussion are already implicit in our constitution, and since reasonable limits on their abuse are already defined by statute and judicial decision, there is no need to state explicitly in a constitutional document what is already implicit in the British North America Act. Yet all of these freedoms have been in some measure restricted or abridged by actions of federal, provincial and municipal governments in Canada. In the past, experience has shown that what is only implicit is often endangered by lack of recognition and of wide public acceptance. An explicit statement of rights and freedoms could be used in our field of education to create public recognition of and support for the fundamental bases of our society, and would make it possible to educate the public conscience against infringement of those rights in local communities and in the nation. Over one hundred and fifty years ago Tom Paine pointed out that "he that would make his own liberty secure must guard even his enemy from oppression, for if he violates this duty he establishes a precedent that will reach unto himself". Last year the joint parliamentary committee in its report stated that "respect for, and observance of human rights and fundamental freedoms depends in the last analysis upon the convictions, character and spirit of the people." That is very true.

The CHAIRMAN: That was my phrase that I contributed.

Dr. CORBETT: Yes. I think you are borne out by the English philosopher Bosanquet, who once said that "a right is a claim in which the community will support you. If the community will not support you in your claim, it will not help to call it a right."

It is profoundly true that a bill of rights can only be a living thing when its terms are so sharply outlined in the public consciousness, that it reveals itself in the conduct of all the citizens. It is my opinion that such a sharp articulation of fundamental freedoms in the minds and the lives of Canadian people can only be secured when the terms of those freedoms are written into

our constitution in such a way that the wayfaring man though a fool may not err therein. In this connection may I quote from a recent speech by the Hon. L. B. Pearson.

In our search for the hidden enemy of our ways of life, we must be careful not to impose regulations or create prejudices which shackle the spirit of enquiry by spreading the impression that anything unorthodox or enterprising or imaginative is suspect. If we reduce the high adventure of investigation to the level of a search in a shallow stagnant pool, we shall soon retreat into the dark recesses of torpid and absolute conformity which is the stuff from which the totalitarian police state is made. This retreat will be certainly assisted if public opinion ties the label of "dangerous" or "red" to everyone who may one have attended a luncheon or the League for Peace and Freedom, or played basketball at High School with the young Radicals. It is easy in a democratic state to become the victims of our fears, just as it is easy—frighteningly easy—to become the victim of our apathy and indifference.

The obligation of those in authority is to strike a balance which corresponds to the realities of the situation. In striking the balance between freedom and security, in the difficult days ahead, I hope that we shall have enough good sense and enough faith in our own institutions to act so that the confidence, the self-respect, the initiative and the devotion to duty of our civil servants will be strengthened and encouraged.

The CHAIRMAN: That was when he was arguing against the "witch-hunts."

Dr. CORBETT: Yes.

Hon. Mr. KINLEY: As regards your definition of "a right", perhaps the definition of "right" is "only what the majority says is right."

Dr. CORBETT: Well, that is what we were discussing.

Hon. Mr. KINLEY: I am reminded of a story. A young student at Normal School, a very eccentric fellow, was told by his teacher to do an exercise on the board. When he had finished it the teacher said "That is not right". He said "Oh, yes, it is right." The teacher said to the class "Hands up, all who say he is right", and the class by a vote decided that he was not right. He said "It is the first time I saw a mathematical problem proved by votes."

Mr. CORBETT: May I now submit and discuss certain reasons why I think this would be important in the field of elementary and secondary education. It seems to me that it is even more important than it is in our field of public adult education. I mean, it is more important that the teachers in Canadian schools and colleges should have in their hands a document designed to safeguard those basic rights which we accept vaguely but are never sure about.

I believe that by making such a document available throughout our whole school system, elementary and secondary, we would enrich and confirm in the minds of our young people the true meaning of citizenship in a country of free people.

It would strengthen the instinct inherent in a child's mind for justice and fair dealing. It would strengthen their pride of country and at the same time that feeling of oneness with the young people of other countries which organizations like the Junior Red Cross have done so much to cultivate. They would then have documentary proof that Canada had taken her place with the United Nations in a universal declaration of human rights.

It is often objected that the American Bill of Rights has been of doubtful value in the United States. But certainly educationists in that country are agreed that it has been one of the greatest single sources in uniting the American people, and in establishing respect for human rights in that country.

Professor Chaffee of Harvard University recently stated that "more than any other part of the constitution the ten amendments which make up the Bill of Rights are the precious possession of private citizens. They came out of the people and were made directly for their benefit".

Mr. Justice Douglas of the Supreme Court of the United States, states that the Bill of Rights is a constant reminder to the American people that once they strike down the expression of ideas that they happen to despise they have forged an instrument for the suppression of ideas they cherish.

The American Bill of Rights is a part of the teaching equipment of every American teacher. It is basic in their philosophy of education; framed copies hang in thousands of their schools.

The CHAIRMAN: Did you ever see a copy of the British North America Act hanging up in any school?

Dr. CORBETT: No, I never have. The citizenship ceremonies which welcome the coming of age of high school student are characterized by a solemn reminder of the significance of the Bill of Rights in the life of a free people.

Hon. Mr. GLADSTONE: On some occasion could you put on the record a copy of the American Bill of Rights? It is not generally known.

The CHAIRMAN (Addressing the Secretary): Will you take care of that?

Dr. CORBETT: More than anything else the Bill of Rights has contributed to that fierce pride of country which characterizes American young people. Sometimes we find that pride a little offensive, but it is there. This whole book is devoted to the techniques and types of programs for this day of celebration which is held throughout the United States, when students who have come of age are welcome to citizenship, and you see enormous floats, with the Bill of Rights written on the side, going down the street, and every child who is welcomed that day into citizenship is presented with a copy of the Bill of Rights.

The CHAIRMAN: With the permission of the committee a copy of the Bill of Rights will be later placed on the record. (*See Appendix to this report.*)

Dr. CORBETT: Dr. A. C. Lewis, Dean of the Ontario College of Education, stated recently that a Canadian Bill of Rights embodying the principles set forth in the United Nations Declaration would be one of the most important documents that could be made available to Canadian schools. "The use of it," he said, "as an educational weapon against totalitarian ideologies and as a medium for the teaching of the basic principles of democracy in the schools would contribute to national pride and unity. It would also contribute to inter-racial goodwill among racial groups in our schools."

I am convinced that there are thousands of young Canadians for whom a clear Declaration in Canada's own constitution would constitute a source of inspiration and of education.

It would help teachers to emphasize those things which distinguish us from the world of repression and fear. Around such a document a far greater sense of nationhood and a firmer faith in democracy would take shape.

Another subject that I deal with briefly is immigration.

It is altogether likely that during the next decade we will see large numbers of immigrants from many parts of the world take up their homes here as new Canadians. It is suggested here that a constitutional Bill of Rights would be of immense value in our naturalization proceedings and in teaching the strangers within our gates the full implications of Canadian citizenship.

People coming to us from central European countries come with the high hope in their hearts that here in this new land they will find the freedoms, the rights, denied to them at home. It would give these people a sense of security to know that the rights of minorities in Canada are protected by law.

Last year the Association I represent prepared and published for this government a book called "This Is Canada". Fifty thousand of these were distributed in the English language, 10,000 in Polish, 10,000 in Dutch, 10,000 in Ukrainian, 10,000 in German and French.

Hon. Mr. KINLEY: You have not got one in Hungarian?

Dr. CORBETT: No.

I think it would have been valuable in preparing such a book for wide distribution in central European countries if we had been able in that section dealing with law in Canada to include a Bill of Rights. It would have added enormously to the value of the book, if in their own language those safeguards were made clear to prospective immigrants. In the meantime officials of the Citizenship Branch of the Department of State, social workers in our cities, and educationists engaged in teaching immigrants the language and ways of the country, find that these people whom we are trying to welcome as future Canadian citizens are so terrified, so inhibited as a result of abuse at home that they are afraid to take part in many of the social or educational activities of the communities in which they have settled. They are afraid of the police, they are afraid of officials. On the one hand they are welcomed by officials and employment agencies and are warned that unless they can support themselves completely they will be deported.

Hon. Mr. KINLEY: They come with that fear in their minds but they soon get over it.

Dr. CORBETT: I hope so. Recently a Toronto paper, the *Globe and Mail*, of February 2, 1950, carried this editorial which I think is worth quoting.

An anomaly in the status of recently arrived refugees from Europe is becoming both more apparent and more troublesome. Canada has officially adopted the designation of new Canadians for those who generally have been known as DP's, but the preferred name has little significance except in a human sense. Most of them are placed on a kind of one year's probation as workers, but their legal status as non-citizen new Canadians does not change until five years has been spent in the country.

In earlier days when Europeans came to Canada as immigrants they retained their foreign citizenship until they were admitted to full status here. The new Canadians now here have no foreign citizenship. They have no Canadian citizenship. Those among them who have good education, and passably good English, are under a specially troublesome handicap; they find that entry into their own professions and business is delayed until naturalization is granted. They find virtually insuperable barriers in arranging normal mortgage accommodation to supplement their own funds and savings in the buying of business of their own. Their ability to enter into most kinds of contracts is prejudiced.

All of them have passed through a double screening—that of the International Refugee Organization, and that of a competent body of Canadian officials. Their aggregate number is not so great that they cannot be easily checked. The suggestion is made that so soon as they have shown reliability and the promise of becoming good Canadians they should be given some kind of interim status which would at once more closely identify them with the country of their adoption and dignify their position as individuals. The "first papers" which prospective new citizens are able to get in the United States provide these advantages.

Hon. Mr. KINLEY: Well, they get a letter certifying that they can permanently stay in Canada.

Dr. CORBETT: If they can support themselves.

Hon. Mr. KINLEY: I have been having DP's work for me. They have to work on the farm for one year. It used to be for a period of two years. After a year's service they get a certificate from the Labour Department stating they have established themselves to the extent that they can stay in Canada.

The CHAIRMAN: I do not think that letter states they can stay in Canada. What it says is that they have carried out their obligation.

Hon. Mr. KINLEY: And that they are considered as being able to stay in Canada.

Dr. CORBETT: Only if they can continue to support themselves.

Hon. Mr. KINLEY: Oh, that is true.

The CHAIRMAN: And do not go into an institution for a nervous disorder or something of that kind.

Hon. Mr. KINLEY: They can secure residency after a year. They are given a document and they are able to go and work where they like. This, of course, is after they have fulfilled the requirements of their contract for the one-year period. I had a Pole with me for two years and then he was free to go and get a job where he liked. I have a Hungarian and his wife with him. He is highly educated and was a member of the constabulary in his own country. He is farming now and although he is not a good farmer he is a fine person, and in the near future he will be able to go and get a job where he likes.

Dr. CORBETT: Yes, but the terrifying thing is that if he does not get a job he is sent back.

The CHAIRMAN: Well, he is liable to be deported.

Hon. Mr. KINLEY: Where would they deport him to?

Dr. CORBETT: Back home.

The CHAIRMAN: I think that if you searched the records you will find that there have been very few deportations of these people.

Hon. Mr. KINLEY: Very few.

Dr. CORBETT: That is the fear they have.

At the present time under the Department of Education in Ontario over 15,000 Central Europeans are being taught our language and the customs of our country. The teachers of these classes are all agreed that it would be of great value if Canadian laws, especially those dealing with the Canadian way of life and the rights Canadians accept as a matter of course, were written down so clearly and simply that even a frightened immigrant could not misinterpret them.

Many of the objections to a constitutional Bill of Rights are based on the fear that it might provide opportunities for dissemination of communist propaganda by depriving the state of the weapons it needs to protect itself against communist activities. These arguments overlook the fact that the most effective weapon against communism is understanding of, and pride in the things which distinguish a free society from a communist society. One of the reasons why communism can make no headway in Great Britain and in the Scandinavian countries, for example, is that the level of public education for adults is higher in those countries than anywhere else in the world.

Here in Canada the organization I represent has sponsored for the past ten years, in co-operation with the CBC and the Canadian Federation of Agriculture, a radio program called the National Farm Radio Forum. Some 30,000 farm people meet in groups of from fifteen to twenty every Monday night in farm homes to listen to the broadcast and carry on a discussion of the subject afterwards. During those ten years I have seen hundreds of Canadian communities rediscover their sense of neighborhood, and develop a civic consciousness which has resulted in better homes, better schools, and better medical care; and develop also a new sense of responsibility to the

community and the nation, as a result of group thinking, group planning and group action. I do not believe that subversive ideologies could find acceptance among people who have in this way found new pride in their communities and in their country.

For these reasons I do not agree that a constitutional Bill of Rights would deprive the state of a needed weapon against communism. I feel it would give an edge and temper to that weapon and make it more effective.

In conclusion, Mr. Chairman, may I express the opinion that by subscribing to the United Nations Universal Declaration of Human Rights, Canada has undertaken to promote effective recognition and observance of human rights and fundamental freedoms in its territory. I feel that Canada would enhance her standing as one of the great nations of the world if she now proceeded to implement this undertaking by inscribing in her constitution a Bill of Human Rights to which every person in Canada is entitled.

Hon. Mr. KINLEY: I think you will agree, Dr. Corbett, that the American Bill of Rights is a bulwark of free enterprise? The right to own property and the right to the pursuit of happiness, for instance, are set out in the American Bill of Rights.

Dr. CORBETT: Yes.

The CHAIRMAN: Are there any other questions? If not, I will now thank you, Dr. Corbett, on behalf of the committee, for the excellent statement you have presented to us. It is obviously the result of a wealth of experience, and it gives us a new slant, for the subject of adult education has not been referred to, at least not in any detail, in any of the other briefs. You have helped us greatly, and again I thank you.

The committee adjourned until Tuesday, May 2, 1950, at 10.30 a.m.

APPENDIX "A"

CONSTITUTION OF THE UNITED STATES

Amendments

(The first 10 Amendments were adopted December 15, 1791, and form what is known as the "Bill of Rights")

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 2

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment 3

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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Special Committee 1950

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THE SENATE OF CANADA



PROCEEDINGS OF THE SPECIAL COMMITTEE ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

No. 5

TUESDAY, MAY 2, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

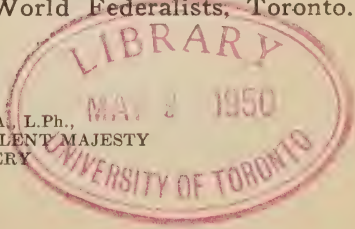
WITNESSES:

Mr. R. Grantham, Associate Editor of the *Ottawa Citizen*.

Mr. Claude Jodoin and Mr. Leslie Wismer, M.P.P., Trades and Labour Congress of Canada.

Mrs. G. N. Kennedy, Mrs. C. E. Catto, Prof. D. H. Hamly, Mrs. D. C. MacGregor, and Mr. H. A. Miller, World Federalists, Toronto.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF REFERENCE

(Extract from the Minutes of Proceedings of the Senate
20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 18

- (1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in the country.
- (3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the Province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

Attest.

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, May 2, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators—Roebuck, Chairman; Baird, David, Davies, Doone, Gouin, Grant, Kinley, Petten, Reid, Turgeon, Wood.—12.

The official reporters of the Senate were in attendance.

Mr. R. Grantham, Associate Editor of the *Ottawa Citizen*, Mr. Claude Jodoin and Mr. Leslie Wismer, M.P.P., of the Trades and Labour Congress of Canada, and Mrs. G. N. Kennedy, Mrs. C. E. Catto, Professor D. H. Hamly, Mrs. D. C. MacGregor, and Mr. H. A. Miller of the World Federalists, Toronto, were present.

Mr. Grantham read a brief on behalf of the Canadian Civil Liberties Union, Vancouver Branch, and was questioned by Members of the Committee.

Mr. Wismer read the submission of the Trades and Labour Congress, and he and Mr. Jodoin were questioned by Members of the Committee.

Each of the representatives of the World Federalists read a statement to the Committee.

At one p.m. the Committee adjourned until Wednesday, May 3, 1950, at 10.30 a.m.

Attest.

JAMES H. JOHNSTONE,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, May 2, 1950

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. Roebuck in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum and I would ask the committee to come to order.

Will Mr. Grantham, please come forward. Mr. Grantham is an editor of the *Citizen*, and appears for a number of authors of briefs; he will tell you what organizations he represents. Primarily, he appears for the Canadian Civil Liberties Union of Vancouver:

Mr. RON. GRANTHAM: Mr. Chairman and honourable members of the Senate Committee, as a former resident of Vancouver, now living in Ottawa, I have been asked by the Canadian Civil Liberties Union, Vancouver Branch, to present its brief on the need for a Canadian bill of rights, to the Senate Committee on Human Rights and Fundamental Freedoms.

It is pleasure for me to undertake this responsibility, for I am acquainted with many of the members of the Canadian Civil Liberties Union, Vancouver Branch, and I know of the conscientious studies they have been making for some time of the state of civil liberty in Canada. The Canadian Civil Liberties Union, Vancouver Branch, is composed of a representative cross-section of the public spirited citizens in Vancouver, many of them leaders of opinion. The officers and members of its advisory board are drawn from, among other vocations and fields of activity, the University of British Columbia, the teaching profession, the ministry, the law, the press, the arts and business. I am informed that the Canadian Civil Liberties Union brief has been adopted and forwarded to you by Branch 72 of the Canadian Legion, University of British Columbia, which I recently had the honour of representing before the Royal Commission on Arts, Letters and Sciences; and also has been adopted and forwarded to you by other organizations, including the United Church of Canada (Vancouver Presbytery), the Human Rights Society of Vancouver, Britannia High School of Vancouver, B'Nai B'Rith Vancouver, the United Jewish Peoples Order, Vancouver, the National Council of Jewish Women of Vancouver, the Chinese Benevolent Association of Vancouver, and the Okanagan Centre Citizens Forum Study Group.

I am certain that the substance of this brief reflects the thinking of a great many other individuals, and organizations in British Columbia, from many of whom you no doubt will be hearing. Since the war British Columbia has experienced an upsurge of tolerance and has made notable extensions of civil liberty. The franchise has been extended to persons of Oriental races, for example, and to native Indians. There is in Vancouver a native Indian sitting in the legislature for the first time in any province.

Mr. CHAIRMAN: I will now read the brief, which is addressed to you.

The Vancouver Branch of the Canadian Civil Liberties Union respectfully takes this opportunity to express its deep appreciation of the foresight, wisdom and active concern with the welfare of the people of Canada that the Senate has shown in setting up, on March 20, 1950, the Special Senate Committee on

Human Rights and Fundamental Freedoms, of which you are chairman; and of the statesmanship which you yourself have shown in energetically working for the creation of this committee.

The Vancouver Branch of the Canadian Civil Liberties Union (hereinafter referred to as "we") is pleased to have the opportunity that the creation of your committee has offered it to recommend respectfully that the draft articles included in the terms of reference of your committee be embodied, at least in principle, and as described more fully below, in an Amendment to the British North America Act, 1867.

Although in making this submission we confine our recommendations to the civil, political and legal human rights dealt with in the first twenty-one articles of the Universal Declaration of Human Rights, passed by the General Assembly of the United Nations, on December 10, 1948, we do so only because we believe that,—

1. As principles, they are generally accepted, and are outside the field of controversy;

2. As principles, they are already implicit in our laws and in the traditions of government of Canada and of Great Britain;

3. It is essential, at this time, to prevent the violation of these existing rights, without the delay that might be entailed in establishing the social and economic rights that are included in the Universal Declaration of Human Rights;

4. These rights can be protected by merely embodying them in our constitution, without the delay that might be occasioned by the need of the social and economic rights for specific implementing legislation.

We wish it to be understood, however, that the omission of reference to the social and economic human rights dealt with in Articles 22-30, inclusive, of the Universal Declaration of Human Rights neither indicates nor implies a lack on our part of sympathy or support for them.

Our recommendation falls into two parts; and we beg, hereby, to present it, and a summary of the arguments which support it.

1. We believe that all the human rights and fundamental freedom asserted in the draft articles provided as terms of reference for your committee should be made more permanent than they are at present, by being embodied specifically in a federal Bill of Rights.

- (a) These human rights represent our hard-won heritage; and in their perpetuation rests the hope of Canadians for their own and their country's future.

- (b) By their very nature human rights are always in jeopardy from attack by people or parties who seek to acquire power. Although the present Parliament of Canada is favourably disposed toward the recognizing of human rights, neither it nor any person can foresee the threats that, even in the near future, may arise and make the existence of legal defences a matter of urgent need for the maintaining of human rights.

- (c) It is as possible to lose these rights in the present as in the future. Such safeguards as now exist are not sufficient to protect them. Gaps in our laws and distortions of their intentions have allowed them to be seriously violated in recent years; and pressures which threaten to infringe them continue to exist.

In support of this argument we beg to call to your attention the following facts and conditions which, in spite of the democratic character of our constitution and government, constitute serious threats to, or violations of, basic

human rights which are generally asserted without challenge to belong to every Canadian, and which are included in the draft articles announced by your committee:

1. Though Canada shows no evidence of being a hotbed of treachery or revolution, it has had more prosecutions for sedition since the enactment of the criminal code in 1892 than all the other countries of the Commonwealth and the Empire put together, excepting India. In Alberta there were more such prosecutions in one year than there had been in Great Britain during the previous century.

Mr. Chairman, to elaborate on that point, if I may, this refers to a period during World War I, on the publication "Law and Order in Canadian Democracy", a series of lectures prepared last year by the Royal Canadian Mounted Police. At page 123 there is a quotation from Mr. Justice Stuart, of the Appellate Division of the Supreme Court of Canada, in 1916, in *Rex vs. Traymore*:

There have been more prosecutions for seditious words in Alberta in the past two years than in all the history of England for over 100 years and England has had numerous and critical wars in that time.

The CHAIRMAN: Whom are you quoting?

Mr. GRANTHAM: I am quoting Mr. Justice Stuart.

Hon. Mr. DAVID: What was that prosecution for?

Mr. GRANTHAM: Seditious utterances.

Hon. Mr. TURGEON: When was the charge of sedition made?

Mr. GRANTHAM: I could not tell you that, sir.

Hon. Mr. TURGEON: Was it during the war period?

Mr. GRANTHAM: Yes. I was elaborating the statement with reference to Alberta, mentioning that honourable senators could find support for that in the Royal Canadian Mounted Police booklet "Law and Order in Canadian Democracy", and the complete quotation from Mr. Justice Stuart.

(2) When Japan entered the war, thousands of Canadian citizens on the west coast were forcibly torn from their homes, transported to and detained in camps in the interior, and deprived by confiscation of their property. All these acts were performed without trial or even the laying of any charges whatever. Not until 1949 were these interned citizens allowed to return to the coast.

In 1945 orders-in-council were passed, without reference to Parliament, that were designed to exile 11,000 persons of Japanese origin, a large proportion of whom were Canadian citizens, and none of whom were charged with legal offences of any kind or with disloyalty. That the Government did not enforce this order does not decrease the threat to human rights contained in the fact that it was passed.

3. In the spy investigations of 1946, suspected persons were seized, denied bail or counsel, held incommunicado, and interrogated by Royal Commissioners before any charge was laid against which they could defend themselves. On findings made in this manner some of these suspects were publicly branded as guilty before they were turned over to the courts for trial; and hence before the courts had an opportunity to reverse the findings, as in some cases they did.

4. Under the Quebec Padlock Laws, the Attorney General may at his own discretion decide that a citizen is carrying on subversive activities, and, without any trial, laying of charges or any other legal formalities, order his premises to be padlocked.

5. Many books and magazines of many kinds are at present forbidden entry into Canada; and any book, at any time, can be so banned at the discretion of an anonymous minor official in the Department of National Revenue.

As an aside, I note that in this respect the Civil Liberties Union takes the same view as that expressed by Senator W. Rupert Davies in the Senate a few months ago.

6. Since 1944, hundreds of members of a minority religious sect, the Jehovah's Witnesses, have been jailed in various cities of Quebec for peddling pamphlets without a licence (obtainable only at the discretion of the chief of police); and they have sometimes been charged with conspiracy and seditious libel because their pamphlets contained attacks on another religion. Frank Roncarelli, a Montreal restaurant owner, was arbitrarily deprived of his licence to sell beer and liquor for providing them with bail.

7. The Quebec Court of Appeals recently upheld the validity of a bylaw which prohibited, under penalty, the distribution in the streets of any book, pamphlet, circular, etc. without a written permit from the chief of police.

I might say that the case referred to here is that of *Saumur vs. the City of Quebec*, a decision of the Quebec Court of Appeal.

Hon. Mr. DAVID: Is the objection of your association against the fact that pamphlets cannot be distributed without a permit?

Mr. GRANTHAM: From the chief of police, yes.

Hon. Mr. DAVID: Your association is against that?

Mr. GRANTHAM: That is right, sir.

Hon. Mr. DAVID: So anybody should have the right to distribute all kinds of pamphlets without any permit? That is your idea?

Mr. GRANTHAM: That is correct. I suspect that that is what they do in Ottawa, where you may be handed a pamphlet on the street here. I doubt very much if a person has a permit from the chief of police to do that.

Hon. Mr. DAVID: Are you sure of that?

Mr. GRANTHAM: No, I am not.

Hon. Mr. TURGEON: You mean they can distribute pamphlets without a permit?

Mr. GRANTHAM: That is my impression.

Hon. Mr. TURGEON: There is a headline in the paper this morning, or last night—I did not have the time to read it—which would convey the very opposite impression. I think the same law prevails in Vancouver.

Mr. GRANTHAM: I can only say I have not heard of it."

Hon. Mr. TURGEON: I am not arguing the question. But I think there was a pamphlet seized yesterday, with respect to this peace movement, of exactly the same nature as the pamphlet that was seized a few days ago in Montreal. I believe the same procedure took place in Ottawa, which does not happen to be in Quebec, and I think we have a similar law in Vancouver, although I am not so sure.

Mr. GRANTHAM: I can only say, sir, my impression is that any seizure of pamphlets in Ottawa was done by private persons on their own initiative. I may be wrong there.

Hon. Mr. DAVID: I want to be very clear on this point. Is your association of the opinion that, whatever may be the nature of a pamphlet, it should be distributed without any permit from any police officer in any city or village of Canada? Is that your opinion?

Mr. GRANTHAM: We are in favour of freedom to distribute literature, sir.

Hon. Mr. DAVID: No matter of what kind?

Mr. GRANTHAM: I do not know of any limitation that they would place on that.

The CHAIRMAN: You would not include blasphemous, obscene or illegal literature?

Mr. GRANTHAM: In a case like that the literature is violating the Code, and therefore is not legally distributed. Any literature which is not violating the law of the country, is what is referred to.

Hon. Mr. BAIRD: What would you term "violating the law of the country"?

Mr. GRANTHAM: Somebody has mentioned blasphemous literature. You would have to enumerate them, but I believe the Code covers those matters, although I am not a lawyer myself. The views of any person or organization which are not a violation of the Code with respect to blasphemy, sedition and libel, we are frank to say, should be distributed without requiring permission of the police.

Hon. Mr. DOONE: What about certain types of literature in connection with which there is a possibility of breaches of the peace following its distribution? One may realize that that might occur.

Mr. GRANTHAM: That is covered in the Criminal Code by the section dealing with sedition. But great latitude is given to people to print or speak as they wish so long as they are not deliberately preaching or organizing violence.

Mr. GLADSTONE: Even though they are attacking another religion?

Mr. GRANTHAM: Your question brings us into areas of controversy. But I can only say that controversy is part of our life in Canada. Persons may not agree with those who assert certain views, but they can hardly deny the right of those persons to express those views, within the law. The laws are fairly definite as to what is an offence.

Hon. Mr. DAVID: So your opinion, sir, if I understand you well in these last remarks, is that, whatever may be the opinions to be found in a pamphlet, no permit from a police officer or chief is necessary—whatever the opinions in the pamphlet?

Mr. GRANTHAM: I should answer "Yes, within the law". May I read this quotation, Mr. Chairman, on this point?

The CHAIRMAN: Carry on.

Mr. GRANTHAM: Not being a lawyer I cannot tell you the circumstances of the quotation, but it says here in this R.C.M.P. booklet on Law and Order in Canadian Democracy the following. Incidentally, these are the words spoken by the eminent jurist, Lord Justice Coleridge in the case of *Rex v. Aldred* (22 Cox C.C. 1 at p. 4) where he points out what is not sedition as well as what may be considered so:

"A man may lawfully express his opinions on any public matter however distasteful, however repugnant to others, if, of course, he avoids defamatory matter, or if he avoids anything that can be characterized either as blasphemous or as an obscene libel. Matters of state, matters of policy, matters even of morals—all these are open to him. He may state his opinion freely, he may buttress it by argument, he may try to persuade others to share his views. Courts and juries are not the judges in such matters. For instance, if he thinks that either a despotism, or an oligarchy, or a republic, or even no government at all is the best way of conducting human affairs, he is at perfect liberty to say so. He may assail politicians, he may attack governments, he may warn the executive of the day against taking a particular course, or he may remonstrate with the executive of the day for not taking a particular course; he may seek to show that rebellions, insurrections, outrages, assassinations, and such-like, are the natural, the deplorable, the inevitable outcome of the policy which he is combatting. All that is allowed, because all that is innocuous;"

Hon. Mr. REID: What year is that?

Mr. GRANTHAM: I am sorry, sir. It does not state that here. This is Lord Justice Coleridge in the case of *Rex v. Aldred*, and there is a quotation here that does not mean anything to me.

The CHAIRMAN: It is 22 Cox Criminal Cases at page 4. It does not give the date.

Hon. Mr. DAVIES: That is a British judge, I take it?

Mr. GRANTHAM: I believe so, yes. It goes on to say, "All that is allowed, because all that is innocuous; but, on the other hand, if he makes use of language calculated to advocate or to incite others to public disorders, to wit, rebellions, insurrections, assassinations, outrages, or any physical force or violence of any kind, then, whatever his motives, whatever his intentions, there would be evidence on which a jury might, on which I should think a jury ought, and on which a jury would decide that he was guilty of a seditious publication".

It then comes down to what he is trying to do. If he is trying to stir up these outrages, then he may be found guilty of sedition; otherwise, he would be quite free to say whatever he likes.

Hon. Mr. REID: That is a little behind the times now because we have moved forward. I think there is a great deal to be said about the words of the Lord Justice Coleridge and his opinion, but in this country now there are not many people using their own opinion but the opinion of Stalin. I think that opinion there is a little out of date.

Mr. GRANTHAM: To my mind it simply recites the British attitude towards the matter, and whether that attitude is out of date is a matter of opinion, I suppose.

The Prince Edward Island Trade Union Act, 1948, prohibits trade unions from affiliating with other trade unions outside the province. It is also an offence for an outside trade union official to enter the province to deliver an address. My impression, sirs, is that that has been somewhat changed, but it does not alter the fact that such an Act was passed in a province of Canada.

Hon. Mr. DOONE: Is it not so that in certain places a man has to join a trade union if he wants to work in a certain occupation?

Mr. GRANTHAM: I cannot be a good witness about that, sir, because I am not well enough informed on the internal labour organization.

Hon. Mr. DOONE: I was wondering if you would consider that as a restriction; if that would be a violation of human rights and fundamental freedoms?

Mr. GRANTHAM: I could only offer you a tentative personal view and I cannot speak for the Civil Liberties Union in the matter, but one analogy strikes me: could one say that the taxpayer has the right to refuse to pay his taxes if he does not want to pay them?

Some Hon. SENATORS: Oh no.

Hon. Mr. DAVID: No, there is no similarity there at all. You are away off.

Mr. GRANTHAM: He is obliged to pay his taxes for which he gets some benefit, so in some union set-ups the policy is to require the payment of fees even if the membership is not active, so that all members can enjoy the benefit of the organization.

Hon. Mr. GRANT: At the time that law was passed in Prince Edward Island, the farmers were shipping their hogs to Charlottetown to the only abattoir available. The hogs were just the right weight for shipping and the best prices were being paid, but just then the strike came on, which was directed from Toronto. I was going to ask you this: would the farmers not have any rights? They were never notified that there was going to be any strike. Then, of course, the government passed an Act putting men in the plant and thus the farmers did not lose their hogs. The law was repealed the following year.

Hon. Mr. GLADSTONE: The farmers could not hold back the growth of their hogs.

Mr. GRANTHAM: I am aware of the difficult situation in that case.

Hon. Mr. GRANT: A union should know better. They held the farmers up and there was nothing the farmers could do about it.

Mr. GRANTHAM: It may be said that the union should know better, and possibly it should have in that case. The point that the Civil Liberties Union cites here is that it is not right for a province to prohibit Canadians from some other province coming into their province on legitimate business. This does not seem to our union to be a proper sort of legislation to have in Canada. It would seem that such difficulties could be handled in some other way.

Hon. Mr. GRANT: On the occasion of the strike in Prince Edward Island the men were offered 50 cents more if they would go back to work, but they said they could not do anything until they heard from Toronto. They contacted Toronto, and word came back, "Don't accept the offer. Keep on striking". So the government then just kicked them out and put in a bunch of men and the work was carried on.

Mr. GRANTHAM: With full respect to the honourable senator all I can ask you to do here is to think of the principle involved which, as I say, concerns the rights of Canadians in general. The question is, can any one province prohibit the entrance into its territory of citizens from another province when they are on legitimate business? The Civil Liberties Union does not believe this should be so. Otherwise we can hardly regard ourselves as a nation of unity and with one citizenship, even temporarily. There must surely be other means of handling this situation.

The CHAIRMAN: We must hurry with this witness, gentlemen, as several other delegations are represented here today.

Hon. Mr. DOONE: Sometimes, Mr. Chairman, after hearing various witnesses who have appeared here, I wonder whether by hurrying we are doing justice to ourselves or to your cause.

Hon. Mr. DAVID: Hear, hear.

Hon. Mr. DOONE: By hurrying along and not raising any objection to what is said, we might be giving the public the idea that we agree with all that is said, and I think it would be very unfortunate to have such an idea spread across the country. Some of us could not agree to the slightest extent with many propositions that have been expressed here.

The CHAIRMAN: Of course, senator, the Chairman is in a difficult position, because we are short of time and there are a number of delegations to be heard.

Hon. Mr. DOONE: I realize that. I just wanted to make that observation because prior witnesses have said certain things here upon which I have made no comment at all, and I wish to place myself upon record as certainly not agreeing with everything that has been said before this committee.

The CHAIRMAN: You can see the kind of jam that I get myself into when there are three other delegations to be heard this morning, and each has a right to be heard.

Hon. Mr. KINLEY: Mr. Chairman, I hope there is no suggestion that because we do not interrupt a witness we agree with all that he is saying.

The CHAIRMAN: Oh, no.

Hon. Mr. KINLEY: I reserve the right to disagree with everything that is said, if necessary.

The CHAIRMAN: What we agree with will be stated in our own report.

Hon. Mr. DAVID: Yes, but at times it has seemed that this committee was becoming a tribune for communistic propaganda.

The CHAIRMAN: I would hardly go that far.

Hon. Mr. DAVID: That is not a reflection on the Chairman, at all.

The CHAIRMAN: No, I know you did not mean that in that way.

Hon. Mr. DAVID: No, but the communists do infiltrate in many places, and they certainly have in this committee.

Hon. Mr. DOONE: I am sorry that we have to embarrass this witness in order to make this point.

The CHAIRMAN: Oh, this witness can take care of himself. I am not the least bit sympathetic for him on that account.

Mr. GRANTHAM: Thank you.

Point 9. As recently as March, 1950, a Chinese delegation protested to the Minister of Citizenship that Chinese residents have not the same rights possessed by other immigrants who have become residents, in bringing their families to Canada.

Hon. Mr. DAVIES: Do you mean citizens or residents?

Mr. GRANTHAM: Residents, before they have acquired citizenship.

Hon. Mr. DAVIES: A little earlier you referred to the Japanese, and I wondered if they were naturalized Japanese.

Mr. GRANTHAM: They were probably in about three categories. Probably the large majority were full citizens of the country, others were residents, and possibly a few were still Japanese nationals. The breakdown is roughly like that.

Point 10. In no province except British Columbia have Canadian Indians been given a vote; and even in British Columbia they are still denied many rights and government services and assistances that belong as matters of course to other citizens of Canada.

Hon. Mr. DOONE: Do you think they are qualified?

Mr. GRANTHAM: Personally, I should think they are.

Hon. Mr. WOOD: You state that in no province but British Columbia have the Indians been given a vote. I think they vote in Saskatchewan.

Hon. Mr. GRANT: And they vote in Prince Edward Island.

Mr. GRANTHAM: I think my statement will stand with regard to any Indian in British Columbia, whether he is a ward or not.

Hon. Mr. DAVIES: You know, of course, that the Indians did vote at one time, but the government decided they were not entitled to vote and took the franchise away from them. The Indians voted in the election of 1896.

Hon. Mr. WOOD: I think the reason the government took the franchise away was that the Indians were dependent upon the government.

Mr. GRANTHAM: There is an issue involved, and I think the members of this Civil Liberties Union hope that the status of the Indians as wards will be altered as soon as possible, and that Indians will become full citizens.

Hon. Mr. DOONE: Do I understand that you advocate they should be given the right to vote while they are still wards?

Mr. GRANTHAM: I say they do vote in British Columbia, and our suggestion here is that they should vote anywhere.

Hon. Mr. KINLEY: You said there was an issue. What is the issue?

Mr. GRANTHAM: The status of the Indians. The question is, should they continue to be wards, if they wish, or should they all be developed towards citizenship?

Hon. Mr. KINLEY: Is that an issue? We admit they should be developed towards citizenship, but should they get the right to vote before they become citizens?

Mr. GRANTHAM: That is another question, sir. It has been answered in British Columbia in the affirmative.

Hon. Mr. KINLEY: Someone must have had an interest in the Indians or in something else.

Mr. GRANTHAM: You will no doubt hear more about that during the discussion of Indian legislation in parliament.

Now I come to part II of the brief.

We believe that a federal Bill of Rights, to serve its purpose fully and permanently, must be enacted as an amendment to the British North America Act.

- (a) Though no Bill of Rights will be effective or permanent without the continued support of the people of Canada, a bill enacted in this way will have greater stability than one enacted in any other way.
- (b) Only by enacting the bill in this way would it be possible to prevent elected representatives who might be injudiciously swayed by public clamour and the passions or prejudices of the moment from precipitately voting it out of existence.
- (c) Only a federal Bill of Rights can equalize civil liberties across Canada and turn the pious professions of the people and the government of Canada into actual laws which will bind both parliament and the provincial legislatures in the making of laws, and every public official in the carrying out of the laws.
- (d) Though other rights no more highly prized are guaranteed in our constitution, and though many Canadians erroneously believe freedom of speech, of association, of the press, and of religion to be so guaranteed, these and other related human rights are not specifically asserted in the constitution.
- (e) In 1948, the government of Canada gave officially its approval and support to the Universal Declaration of Human Rights which was passed and proclaimed by the General Assembly of the United Nations. In so doing, the Government of Canada pledged itself, amongst other things, "by progressive measures, national and international, to secure (for the human rights proclaimed therein) universal and effective recognition and observance". The government is, in consequence—and quite apart from when it shall achieve its full objectives—under a moral obligation to establish at once existing, and immediately achievable human rights on the most effective national foundation—namely, as an amendment to the constitution.

III. We believe that the effective protection of human rights is a deterrent to fascism, an influence for internal and external peace, and an end which is worth striving for in itself.

Therefore, the Vancouver Branch of the Canadian Civil Liberties Union recommends and strongly urges:

1. That all the items dealt with in the eighteen draft articles and the three supplementary paragraphs (numbered 149, 150 and 151) cited as terms of reference in the Senate Motion of March 20th, 1950, appointing this Special Senate Committee on Human Rights and Fundamental Freedoms be specifically incorporated, in the same or other words, in a Bill of Rights.

2. That in such Bill of Rights the following item be added to the above-mentioned draft Articles:

No discrimination shall be made against anyone in laws or regulations on grounds of race, sex, language or beliefs, or on any ground mentioned in the paragraph numbered 149 in the Motion appointing this Special Senate Committee.

3. That such Bill of Rights be enacted by incorporating it in the British North America Act in the form of an amendment or amendments.

3(a) Or, that it be enacted in some other manner which will make its contents equally, or more, inaccessible to changes made to fit special circumstances, temporary acquisitions of power, or the vagaries of public clamour, passion, or fanaticism.

We respectfully request that your Committee give these recommendations your approval and that they take such steps as are necessary to secure their enactment as law.

Yours sincerely, D. McNAIR, *Secretary*.

Mr. Chairman, if I am permitted and the committee wishes I should like to continue with remarks by which I would endeavour to interpret something more of the general thinking of this group.

The CHAIRMAN: We have been very nearly an hour with this witness, gentlemen, and I doubt if we have the time.

Hon. Mr. DAVID: That does not matter.

Hon. Mr. KINLEY: Let us hear it.

Hon. Mr. DAVID: Before you proceed, could you give us the names of your officers and their professions or occupations.

Mr. GRANTHAM: The chairman is Mr. Kenneth Drury, whom I know well and who is a prominent newspaperman, formerly of Victoria now of Vancouver. The vice-chairman is Dr. W. L. MacDonald, who was and probably still is Professor of English at the University of British Columbia; the counsel is Garfield A. King, a lawyer; the treasurer is Robert Christie, whose vocation I do not know; the secretary is Mr. D. C. MacNair, whom I know personally, but cannot recall his vocation. The corresponding secretary is Miss June Higdon of North Vancouver. The advisory board consists of Dr. A. Earle Birney of the Department of English, University of British Columbia; Dr. A. F. B. Clark of the University of British Columbia; Dr. J. Roy Daniells of the English Department of the University of British Columbia; Mr. David A. Freeman, a lawyer; Mr. John E. Gibberd, a high school teacher; Lawren Harris, an artist; Wilfred Jack, who is unknown to me; Dr. F. Katz, also unknown to me; Gilbert Kennedy is unknown to me; Hunter C. Lewis, Department of English; Dr. Leonard Marsh, University of British Columbia, professor of social work; John E. Mecredy, known to me, but his vocation is not known; Reverend J. Melvin, known to me; N. Mussallem, a lawyer; Mr. C. J. Oates, who is, or was, President of the Canadian Teachers Federation, and is a high school teacher or principal. I am not sure which, in Vancouver; Mr. Elmore Philpott of the press; John Prior whom I believe to be a teacher, and who was known to me at one time; Professor S. E. Read; Dr. W. Robbins; Dr. Barnett Savery; Jack Scott, a columnist on the Vancouver Sun; Miss Elizabeth Thomas; Reverend Dr. D. H. Telfer; Watson Thomson; and Dr. R. E. Watters.

Hon. Mr. DAVID: Are they all Canadian citizens?

Mr. GRANTHAM: I must not say yes, without knowing the facts. To my knowledge they are.

Hon. Mr. DAVID: What is the occupation of Mr. Philpott?

Mr. GRANTHAM: Mr. Philpott writes a column for the press. Now, Mr. Chairman, the question is as to whether I may or may not proceed.

The CHAIRMAN: I am in the hands of the committee; I am not a dictator.

Hon. Mr. KINLEY: There is no use in hearing a man half way through; if we permitted him to start, let him finish.

The CHAIRMAN: If that is the will of the committee. I have three others to hear from.

Hon. Mr. GRANT: Do I understand that if we had a bill of rights there would be no need for any labour unions?

Mr. GRANTHAM: I would not express an opinion offhand on that point.

The CHAIRMAN: Go ahead with your brief.

Hon. Mr. DAVID: May I first ask this question: Aside from the fact of, as you mentioned, the Padlock Law of Quebec, and the fact that the Japanese at least were put into camps during the war, and the sedition case you cited, could you tell me other rights a Canadian in Canada is not enjoying, which you would like him to enjoy?

Mr. GRANTHAM: I suggest, sir, that I can answer in part at least in the remarks that I am about to make.

Hon. Mr. DAVID: Is there any one right which a Canadian in Canada today is not enjoying?

Mr. GRANTHAM: In theory, sir, we Canadians, like the British people, have our liberty; in fact, however, Canadian civil liberties are sometimes infringed upon. You have had many other cases cited to you by other delegations, and there are some cited in this brief.

Hon. Mr. BAIRD: But for instance across the border there are many infringements on civil liberties and civil rights every day and in every way.

Mr. GRANTHAM: I have a comment here on that, if I may make it.

Hon. Mr. DAVID: Go ahead.

Mr. GRANTHAM: This is not specifically authorized by the Civil Liberties Union of Vancouver, but it is, to my knowledge, the general thinking of the group, as of myself.

The Canadian Civil Liberties Union, Vancouver Branch, have previously associated themselves with the Canadian Committee for a Bill of Rights and the Association for Civil Liberties, Toronto, in representations made to parliament. Last fall they noted with approval the motion by Senator Roebuck to incorporate a bill of Human Rights and Fundamental Freedoms in the Canadian constitution by amendment to the British North America Act.

The Canadian Civil Liberties Union advocates a bill of rights for Canada that will not be subject to alteration, except by consent of the electorate or of the federal and provincial governments jointly. It sees the need for a bill that will not be part of the statute law, which parliament can change, but will be part of the fundamental law of Canada. It therefore recommends the procedure of amending the British North America Act so that civil liberties will be explicitly stated constitutional rights.

Opponents of a Canadian bill of rights point to the example of Britain and suggest that Canada needs no such enactment, and advocates of a bill of rights, point to the example of the United States. The Canadian Civil Liberty Union, Vancouver Branch, has become convinced that conditions in Canada differ sufficiently from those in Britain to make a bill of rights desirable and necessary.

Hon. Mr. DOONE: What is the difference, please?

Mr. GRANTHAM: The British constitution is unwritten. It has evolved in law and custom. Among the great documents are Magna Carta, the Petition of Right of 1628, the Habeas Corpus Act of 1679 and the Declaration of Right in 1689. These great declarations have no binding force.

After 1689 the supremacy of parliament over the Crown was beyond dispute. You might say since then we have been faced with parliament rather than the Crown, to deal with. But as Professor A. R. M. Lower of Queens

University has pointed out, the Declaration of Right has been caught up in the doctrine of parliamentary supremacy. Today the British people may be said to have liberty rather than rights. Liberty within the law and subject to the will of parliament.

Hon. Mr. DAVID: What difference do you make between liberty and rights? Is not liberty the right to use rights?

Mr. GRANTHAM: Liberty need not be specified; it exists; rights are declared, I should think.

Hon. Mr. DAVID: I would not say that.

Hon. Mr. KINLEY: Liberty might be a matter of race; others might be a matter of right.

Mr. GRANTHAM: In my opinion the distinction is of some importance, gentlemen. The British have their liberty within the law and subject to the will of parliament. For a homogeneous people, with deep-rooted traditions, this framework has proved highly satisfactory. That it is not always entirely adequate, however is indicated by legislation recognizing the importance of freedom of news in Great Britain.

But Canada is not a homogeneous nation. It is a federal state, with many governments of differing outlooks, making laws affecting the individual. Its federal form is prescribed in a written part of its constitution, the B.N.A. Act, where certain rights are guaranteed to minorities and individuals, as well as to governments.

Hon. Mr. DOONE: That is in Canada?

Mr. GRANTHAM: Under the B.N.A. Act, yes, sir.

Hon. Mr. DOONE: Minorities have certain rights?

Mr. GRANTHAM: Guaranteed.

Hon. Mr. DOONE: They have not got that in Britain.

Mr. GRANTHAM: That is what I am saying; that is the difference.

In recent years Canada has become a full fledged nation, no longer under the wing of Britain. Perhaps many Canadians have not yet realized that since the Statute of Westminster in 1931 no Canadian law need be held void on the ground of being repugnant to the law of England. Before that any law in our country might be held void, as being repugnant to English law; now we are on our own.

Since then civil liberties have had no safeguard against governmental infringement except the wisdom of law makers and of the courts in their subordinate role. Experience has shown that these safeguards are inadequate.

In a notable decision against the Alberta press, of 1937, the Chief Justice of the Supreme Court said in effect that the B.N.A. Act contemplated a parliamentary democracy working under the influence of public discussion, that, in other words, the existence of civil liberties is implied and infringements of them are unconstitutional. But infringements have been so frequent in recent years that together with many other citizens the Canadian Civil Liberties Union feel the need for an explicit statement of constitutional civil liberties. This need is all the greater now that Canada has a Citizenship Act, in which new citizens are told they have civil liberty but are not told what their rights really are. Moreover, it is an embarrassing fact to Canadians that their representatives at the United Nations have to explain that their government endorses the principles of human rights without being able to assure them fully to the people of this country.

As the Canadian Daily Newspaper Association said in a brief to the Parliamentary Committee on Human Rights in 1948, we have a written constitution but no safeguards for freedom of speech and of the press; "We have

been coasting insecurely on British precedents and sometimes violating them."

Some of the evidence of these infringements has been cited in the Canadian Civil Liberties Union brief. Governments themselves have been offenders, including the federal government and the governments of British Columbia, which some years ago adopted a Special Powers Act, Alberta, Prince Edward Island, and Quebec. A bill of rights has not prevented infringements of civil liberties in the United States, but it has proved of great legal and educational value, it has helped to unite a heterogeneous people, and it is promoting improvement of conditions that are open to criticism. During the war Americans were not subjected to special measures so sweeping and arbitrary as those proclaimed in Canada. Infringements of liberty in this country have violated such American constitutional guarantees as religious liberty, freedom of the press, protection against unreasonable searches and seizures, speedy and public trial, and protection against cruel and unusual punishments.

With constitutional revision under study and soon to be discussed by the federal and provincial governments, the Canadian Civil Liberties Union believes the time is ripe for Parliament to proclaim the civil liberties that are the right of all Canadian citizens, of all persons living in this country, and to propose to the provinces that the British North America Act be amended to include a bill of rights.

The CHAIRMAN: Thank you. Now, gentlemen, you have asked enough questions, have you not?

Hon. Mr. DOONE: I am very much disturbed about the application of these principles in time of war. I should think that in such emergencies a government should have greater latitude as to what it should do by way of seizures and attempted searches.

Hon. Mr. BAIRD: Would not the War Measures Act take care of that?

Hon. Mr. KINLEY: I hate to see an organization getting into a place where it will support anything that can be regarded as against the efficient and very salutary action which was taken in a certain emergency. Certain people were arrested, and the limitation of their activities protected the state against their collaboration. Really, no one was hurt. I think it is a wrong stand on the part of any organization to say that the government did wrong. It did absolutely right on that occasion, and ought to be commended for it.

Mr. GRANTHAM: Would not the argument of ease and efficiency be a dangerous one to pursue, because you might have all kinds of arbitrary measures being taken and approved of because they are easy and efficient.

Hon. Mr. KINLEY: The offence of selling out your country in wartime is a very grave one.

Hon. Mr. DOONE: The wisdom of the government's action is evidenced by the fact that people who opposed it at the time now say that the government did not go far enough.

Hon. Mr. REID: It is like the Japanese question. You can look back on it now from the standpoint of ease and safety, but anyone who lived in British Columbia during the recent war realizes that Japan had men there under its control; these fishermen had 2,000 boats; and no one could tell when the Japanese Navy or Army might land on the Pacific coast. You have to turn your mind back to that time. In the interests of the nation I believe the Dominion Government did right to sweep those 2,000 boats in. I met Japs who openly said that they were there on behalf of Japan. They said so boldly. I am not going to quote Russia as an example, but it is a fact that when the war started Russia took half a million Germans who, with their ancestors, had been in Russia for a century and a half, and moved them away for safety purposes. I am not saying we should copy that proceeding; but it is necessary in time of war to do things

in the interests of the nation which would not be done in peacetime; and it looks as though the government's action was right. As I say, I am a British Columbian, and I believe it was right for the safety of the nation to take those 2,000 boats off the seas.

Mr. GRANTHAM: I would say, as a former British Columbian, that they did wrong in the handling of the people concerned, and many other British Columbians think the same, today, on that matter.

Hon. Mr. REID: I am sorry I have not the time to argue the Japanese question with you, because probably I could give you a few pointers of which you have not heard.

Mr. GRANTHAM: I recall the Prime Minister saying that no case of disloyalty had been proved against a single Japanese citizen in British Columbia.

Hon. Mr. REID: Yes, but remember that Japan called every Japanese in British Columbia one of their nationals, and said "We own you and control you", yet not one Japanese got up and denounced that and asserted "I am a Canadian citizen". Surely there should have been some right-thinking men to say that they were Canadian citizens, but no Japanese said it, because he was a Jap and Japan had his name.

Mr. GRANTHAM: We could argue this Japanese question—

Hon. Mr. REID: I would like to have time to argue it. I am a believer in freedom, but—

Hon. Mr. GLADSTONE: But the safety of the nation has to stand first.

Hon. Mr. REID: The safety of the nation comes first.

The CHAIRMAN: And the spy question, too, is a matter for careful analysis rather than quick debate. There are certain features of the spy case that I strongly object to. With the general comments you have made I entirely agree, senator. At the same time I do not think that we did it just right.

Hon. Mr. DAVID: Would you mind if I asked just one question.

The CHAIRMAN: Go ahead. Let us have one question.

Hon. Mr. DAVID: Is it your opinion that a Communist in Canada can take an oath of allegiance to Canada?

Mr. GRANTHAM: Mr. Chairman, may I suggest that the question has no special relevance to my appearance today. It is a very difficult question, and it could easily embarrass a person. We would need a great deal of discussion; we would have to define "Communist" and so on. I doubt if I should give an answer to it unless it would serve some useful purpose.

Hon. Mr. DAVID: Well, it would. An avowed Communist, receiving his orders from Moscow, can that man take the oath of allegiance in Canada as a Canadian citizen?

Mr. GRANTHAM: You mean, and mean it?

Hon. Mr. DAVID: It is the oath of allegiance.

Mr. GRANTHAM: To your question so worded I would say, obviously he could not take it, sincerely.

Hon. Mr. DAVID: Many have done it.

The CHAIRMAN: When you say "can't", I think you mean, cannot properly or cannot logically or something of that kind.

Hon. Mr. DAVID: Conscientiously.

Hon. Mr. PETTEN: It has no value whatever.

The CHAIRMAN: "Properly", I suspect you would phrase it. He can, of course; he has the physical ability; but if his allegiance is owed to Russia he cannot, within the meaning of the word, take an oath of allegiance to Canada. I think that is obvious, Mr. Grantham?

Mr. GRANTHAM: Yes, sir.

The CHAIRMAN: Now let us go on, if you will permit me to do so.

Mr. GRANTHAM: Thank you, very much.

The CHAIRMAN: Thank you, Mr. Grantham. You stood up to a pretty heavy barrage.

The Trades and Labour Congress of Canada have honoured us with their presence in the persons of Mr. L. E. Wismer, who is Public Relations and Research Director; and Mr. Claude Jodoin, Vice-President.

Mr. WISMER: Mr. Chairman and senators, the Trades and Labour Congress of Canada appreciates this opportunity of appearing before your committee and of presenting its views concerning Human Rights and Fundamental Freedoms, what those rights and freedoms are, and how they best can be preserved in our democratic country.

This Congress, with the unanimous approval of its Annual Convention, in 1946, established a Standing Committee to Combat Racial Discrimination which had, as one of its principal objectives, the enactment of a Bill of Rights for Canada. We are pleased to note the creation and work of your committee as one of the milestones along the educative and legislative road this standing committee has been moving.

We have been advised by those who would go very slowly, if at all, in the direction of positive assertion in law of our human rights and fundamental freedoms that education on these matters should precede any legislative action. Within the trade union membership in this country this education process has progressed far enough to no longer justify any further delay in the enactment of a Bill of Rights.

Under the guidance of our standing committee to combat racial discrimination local committees have been established in the main trade union and industrial centres for the purpose of promoting education on matters of racial and religious prejudice and discrimination, how these can be reduced and finally eradicated; on fair employment practices, how these can be assured to remove discriminatory practices in employment and promotion; and on the extent and methods of preserving our human rights and fundamental freedoms. These local committees have engaged full time secretaries who foster this educational program. As their work has progressed, a better feeling as between members of diverse racial and religious groups has become evident. In the same period the desire and demand for a Canadian Bill of Rights has grown.

Indicative of the position taken by the membership of our affiliated organizations which numbers approximately half a million, the Congress reiterated its request for the enactment of a Bill of Rights in its memorandum to the prime minister and the government presented on March 9th of this year:

And I shall quote from a section of the Bill of Rights:

"We strongly urge that the parliament of Canada pass a Canadian Bill of Rights which will assure to every individual freedom of speech, freedom of assembly and association, freedom of worship, freedom of the press, freedom from arbitrary arrest and detention and equal opportunity to all, regardless of race or national origin, colour or creed. This should include equal citizenship and voting rights to our North American Indian population without the giving up of their collective rights on reservation property.

"We recommend that into such a Bill of Rights should be written the fundamental freedoms as expressed in the United Nations Declaration of

Human Rights. We further urge our Government to take the lead in establishing a covenant of the United Nations to which member nations can subscribe when they have given full legal force and effect within their own boundaries to the statements contained in the United Nations Declaration.

"We note the intimation of your government through its Leader in the Senate that, if a motion were presented at the present session of parliament to add a Bill of Rights to the British North America Act, it could be referred to a Committee of the Senate for investigation and public hearings. We strongly urge that this be done in the hope that a Bill of Rights will soon become a part of our Canadian constitution."

This demand for positive assertion and preservation of human rights and fundamental freedoms, though made in 1950, has a long history. Trade unions know from bitter experience the need for constitutional protection of the right of peaceful assembly and the freedom of association. In this connection it may be well to recall that trade unions were illegal bodies in Canada eighty years ago. Not until 1872, with the passage of the Trade Union Act, did they become legal associations.

Although unions were no longer considered conspiracies after 1872, various provisions of the Criminal Code made union organization difficult and the rights of citizens, because they were trade unionists, were often abrogated.

Instances could be cited, but it would appear unnecessary to emphasize these earlier difficulties when others of equal or more serious import can be mentioned in recent years.

Not only has the right of assembly been accorded to unionists in hesitating and niggardly fashion throughout the years, but it has been set aside in the past by unilateral action of the parliament of Canada. In 1919, as a result of the activities of the "one big union" and the Winnipeg general strike, the parliament of Canada amended the Criminal Code in section 98. This amended section set aside the so-called inalienable rights of Canadians to peaceful assembly and freedom of speech.

This piece of unreasonable, un-Canadian and unwarranted legislation enacted under conditions of temporary panic remained in force until 1936. In those seventeen years sound, sensible and prudent citizens urged the repeal of section 98. Their efforts were seemingly unavailing.

The feelings of this Congress on this matter were summed up in an editorial in the official Journal of The Trades and Labour Congress of Canada in December, 1928, in these words: "Efforts on the part of organized labour to have these provisions, which are incorporated in section 98 of the Criminal Code, repealed and the sections that existed prior to their enactment in 1919 re-enacted, have so far been unsuccessful . . . Labour has emphasized on every occasion that it has no desire to seek privilege to commit any unlawful act and the repeal of this section does not create such a condition, as the fact remains that, up to 1919, property and persons of all the citizens of Canada were amply protected through the provisions of other sections of the Criminal Code."

It should be noted in passing that this Congress is not a little pleased to find the incentive and initiative for action concerning the assertion of our fundamental freedoms and human rights within the framework of our constitution arising in the Senate as evidenced by your Committee's consideration at this time. This pleasure on our part is the more accented by the fact that we were forced to say, in 1928, as a part of the editorial quoted above, these words: "It is true that the House of Commons, composed of elected members, has passed legislation in harmony with these requests on different occasions, but each time the non-elected Senate has thought fit to ignore this expression of public opinion and has rejected the measures."

These provisions of section 98 were still in force at the beginning of the year 1936. In its memorandum to the government of Canada on January 15 of that year, the Congress said: "We regard section 98 of the Criminal Code a threat to the civil liberty which Canadian citizens have inherited as their birth-right, and until the Criminal Code is amended to remove those features of this section which curtail freedom of speech and assembly, the liberty of the people of Canada will be subject to the disposition of those enforcing the law."

The legislation which amended these offending provisions of section 98 came into force in September, 1936, but the wrong that was done in thus setting aside the civil rights of the people by a unilateral action of the parliament of Canada was not righted by simply amending the legislation. These rights to free speech and freedom of assembly still remained unprotected against another similar action by parliament.

Part IV of the British North America Act distributes the legislative powers as between the parliament of Canada and the provincial legislatures. Section 92 (13) places "property and Civil Rights in the Province" in the hands of the provinces. Section 91 (27) places "The Criminal Law" in the jurisdiction of the parliament of Canada.

The experience in connection with section 98 of the Criminal Code suggests that civil rights can be set aside by the unilateral action of the federal parliament. This Congress believes that that possibility should be removed. It is our firm opinion and desire that our constitution should be amended so that our human rights and fundamental freedoms may be written into it, and, at the same time, that our constitution in regard to these matters be capable of amendment only by unanimous agreement of the parliament of Canada and all of the provincial legislatures.

In making this submission to your committee for the entrenching of clauses in our Constitution asserting the human rights and fundamental freedoms of all Canadians, organized labour in this Congress makes no special plea. We ask no privileges. We ask only that all be treated equally.

We recognize and advocate the use of police forces for the protection of persons and property. However, many instances are on record of the use of such forces, and, at times, of the military, in labour disputes. This use of police forces and military power we greatly dislike and oppose, and we believe any statement of civil rights and fundamental freedoms should be precise enough to preclude such action by the governing administration.

Our opinion on this matter was aptly stated in our memorandum to the government of Canada in 1936, referred to above, which states: "A tendency which runs counter to our Canadian ideals of liberty is the too frequent use of the police and military power in labour disputes. In order that the workers may exercise their lawful rights to improve and protect their standard of living, we advocate that definite limits be put upon the use of armed forces in disputes between employer and employee."

This Congress stands unalterably opposed to dictatorship. Again we would draw the attention of your committee to the views on this matter as expressed in our memorandum to the government of Canada in 1936, referred to above, in these words: "We wish to affirm our steadfast faith in democracy as a system of government. In so doing we desire also to deplore the tendency towards dictatorships in some other countries and we ask the government to take necessary steps to prevent their growth if at any time any faction seeks to implant such political principles in Canada. At the same we have a fellow-feeling for oppressed classes in countries under dictatorships, and whenever diplomatic usage permits we suggest that the government make representations on behalf of trade unionists and religious and racial groups where they are subject to restrictions on liberty which are opposed to the generally accepted principles of mankind."

This Congress stood steadfast in opposition to Fascism and the Nazi dictatorship. That threat having passed, we find ourselves facing threats of another oppressive dictatorship. This Congress, as it stated in its memorandum to the Government of Canada, presented on March 9 of this year and referred to above, "is diametrically opposed to the policies of Communism."

We believe that the strength and constructive development of our Canadian democracy depends upon the unity of all our people. We recognize that there are individuals and groups who desire to maintain and foster their heritage of national characteristics and customs. These people and groups in our opinion need not be a weakening factor in our democracy. But we are also aware that certain persons and groups seek to accentuate these differences between native and foreign-born people and foment antagonisms between racial and religious groups.

This Congress believes that our Constitution should provide positive protection to all minority groups and definite legal restraints against discriminatory practices which may be employed to the detriment of any members of such minority groups.

While it may not be possible to remove all discrimination against members of minority groups, many of these practices can be suppressed or greatly lessened by laws. Laws can foster the conviction that discrimination is wrong and fix standards that are recognized by the majority of the people. People obey the law to avoid its penalties although they may not respect it. Social customs grow up in harmony with the law. Not the least important factor arising from the existence of laws banning discrimination is the provision of indemnities for the person wronged.

It is the opinion of this Congress that a Bill of Rights should include provisions to protect all members of all minority groups against discrimination.

This Congress feels that the human rights and fundamental freedoms which should be preserved to all Canadians are set out in the Articles of the Universal Declaration of Human Rights as adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948. In suggesting how these rights should be safeguarded in our constitution, we would refer to the terms of reference of your committee. We assume that the articles and sections set forth there would, if enacted, become sections 148 to 151 of the British North America Act.

And then, in order to make our brief complete, we set out the articles which appear in the terms of reference.

Hon. Mr. PETTEN: I take it you have made no alterations.

Mr. WISMER: No, sir; this is a straight quotation from the terms of reference.

"148

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote.

"149. Every person is entitled to all the rights and freedoms above set forth, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

"150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

"151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled."

While we strongly desire the fullest expression and preservation of civil liberty in Canada, we are mindful of the existence of those who would use such freedom to destroy our civil rights and foment discord between minorities. Thus, in considering what our civil rights should be and how they can best be protected, we would draw your Committee's attention to Article 30 of the United Nations Declaration, which reads: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

We would recommend that the eighteen articles of proposed section 148 be prefaced with suitable wording which would carry the prescription of Article 30 of the Declaration into our Constitution as an immediate and general protection of the rights and freedoms which follow in the articles and succeeding sections.

We would also recommend that the proposed section 148, in addition to the above, state at the beginning and before the enunciation of the eighteen articles that these rights and freedoms are to be enjoyed by our native Indian population. We make this recommendation because other legislation in existence leaves our Indian population in the hands of the federal government, and their rights and freedoms along with all other Canadians should be placed among the entrenched clauses in the constitution.

We would suggest that article 14 of proposed section 148 does not provide the full protection necessary in an industrial country. Many of our people are unable to own property. They are forced through economic circumstances to lease for shelter the property of others. We would recommend that sub-section (1) of this article be amended to read: "Everyone has the right to own or lease property alone as well as in association with others". And we would further recommend that a further sub-section be added to this article reading: "(3) Everyone has the right to shelter".

In article 17, we would suggest the addition of a sub-section 3 reading as follows: "Nothing in sub-sections 1 and 2 of this section is to be construed as prohibiting the proper operation of a trade union agreement made between an employer and his employees, which contains a clause requiring all of the employees of that employer to be members of the specified union".

This Congress suggests that a further article should be added to the proposed section 148 to provide for certain economic and social rights which should be adequately protected in a modern democratic society. This additional article should set forth the right to an education and to the free choice of the kind of education; the right to work and the free choice of employment; the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond the individual's control.

As indicated earlier in this submission, the Trades and Labor Congress of Canada greatly desires the enactment of a Bill of Rights which will assert in positive fashion the human rights and fundamental freedoms of all Canadians. We are also concerned that these rights shall be preserved effectively and permanently.

While there is perhaps no prudent person who believes that a simple statement of these rights and freedoms and the incorporation of them in the constitution of Canada will protect and preserve them for all of our people against all eventualities, we are convinced that such protection and preservation of our fundamental freedoms can be provided in two ways. The first and most important way in which our rights and freedoms can and will be preserved is through the constant vigilance of those who hold such rights and freedoms sacred. But along with this, we believe that our human rights and freedoms, once stated, and enacted into law, can be given constitutional and legal protection by requiring that they can be amended only by the unanimous consent of the Parliament of Canada and all of the legislatures of the provinces.

The CHAIRMAN: Would that not mean never? They would then be pretty nearly unamendable, would they not?

Mr. WISMER: More or less, sir. By this means their amendment or setting aside can never be accomplished by unilateral action of any one legislative body or administration.

It is our earnest hope that the success of your Committee in its investigations and recommendations to the Senate and through it to the Parliament and people of Canada will provide an immediate avenue for the enactment of these human rights and fundamental freedoms into the law of Canada.

Respectfully submitted,

PERCY R. BENGOUGH,
President.

GORDON C. CUSHING,
Secretary-Treasurer.

CLAUDE JODOIN,
*Vice-President and Chairman Standing
Committee to Combat Racial Discrim-
ination of The Trades and Labor Con-
gress of Canada.*

Hon. Mr. DOONE: Mr. Chairman, I think that is a very fine brief.

The CHAIRMAN: It is a very thoughtful brief.

Hon. Mr. PETTEN: And very sensible.

Hon. Mr. DOONE: I am sure it contains a great deal of fine thought. There is only one question that occurs to me and that is what you are going to do about unskilled labour.

Mr. WISMER: In what respect?

Hon. Mr. DOONE: In your idea of a closed shop, what are you going to do with the poor fellow who does not join the union.

Mr. WISMER: I should like to clarify that point.

Hon. Mr. DOONE: I am very much in favour of your labour group, but nevertheless this question has always puzzled me. Representations have been made previously, and I always wonder what is going to happen to the poor devil who does not belong to a union.

Mr. WISMER: I think we should for a moment say that you have more than the closed shop; I think that might interest the committee.

Hon. Mr. DAVID: Yes.

Mr. WISMER: The closed shop, as we understand it has an agreement now that one must belong to the union before he is employed. That, of course, exists in only very highly skilled trades, and perhaps it rose with the printers or the typesetters. Those people, in order to increase the skill in the trade had to improve conditions—which years ago were very bad, and the workers were considered poor risks life insurance—and would not allow any one to work in the shop until he was a member of the union and subscribed to the standards of the union. Now they are preferred risks for life insurance.

That is the closed shop. However, in later times we have developed a new type of agreement, which is known as the union shop in which you may be employed if you are in the shop. The agreement is to the effect that you must belong to the union if you are employed subsequently. There is a clause in the contract which says that after thirty days, or sixty days—in relation to the company's employment arrangements as to how long probationary employment is. If you are going to work for the company you must belong to the union, because the agreement between the employer and the workers has raised certain standards and working conditions and you are part of that, and you must pay

for it. In addition to that there is what is known as the Rand formula which allows certain people to contract in part. As you know, part of this is because of religious complications; there are many people who wish to worship God in a certain way, but do not wish to vote or belong to an association; yet, they have the right to work. However, if they obtain higher wages or better working conditions they must pay for it, and they are prepared to pay for it. The Rand formula provided for that; it requires the paying of dues whether a person belongs to a union or not.

Those three conditions exist: The closed shop, the union shop and the Rand formula. There are many types of preferential hiring, and so on; and in every case agreements between employers and the association of his employees are entered into freely. As a trade unionist I say we do not want anybody in the union who does not want to belong to it; on the other hand we do not want people in the shop who will break down conditions that the majority in the shop have worked all their life to build up.

Hon. Mr. KINLEY: Mr. Chairman, it is stressed in the brief, that man has a right to work. Now, I presume that since a union accepts a man, it has the right to put a man out of the union; therefore, if a union decides to put a man out, then he can no longer work in that shop, and he has lost his job or his right to work by reason of the action of the union.

Mr. WISMER: Some unions have found that out.

Hon. Mr. KINLEY: The right to hire and fire by a closed shop is then controlled by the union.

Mr. WISMER: No, it is not, Mr. Chairman. Look at all the agreements of this type. You will see that in a closed shop, a union shop, the arrangement is that the union has the right to supply the men that the employer wishes to hire.

Hon. Mr. BAIRD: That he has to hire, not wishes to hire.

Mr. WISMER: No: let us get this straight. He does not have to hire a man because the union offers him.

Hon. Mr. BAIRD: Then you would go out on strike.

Mr. WISMER: No, we cannot go out on strike. - We have laws providing that we cannot go on strike until we go through certain procedure of negotiation and conciliation. The important point is this: If the union is not able to provide men, then the employer is free to go into the open market. In other words, you cannot hold up an employer because you are unable to supply the men.

Hon. Mr. KINLEY: In other words, a man must belong to a union, and the union controls who shall belong to it, therefore it controls who should be hired.

Mr. WISMER: In all of the highly skilled unions . . . I think we should make it clear that there is a difference between men with high skills and men who are known as common labourers. I know of no closed shop arrangements which involves common labourers.

Mr. JODOIN: Also in the contract under the union shop procedure is a clause of the right to discharge. Let us suppose that you are an employer, and I am a representative of the union, and we do not agree that Senator David, for example, should be one of your employees. We have then to submit the question to an impartial chairman.

Hon. Mr. BAIRD: Do you ever abide by the decision?

Mr. JODOIN: Yes, definitely.

Hon. Mr. KINLEY: From a practical standpoint the position of the man who does not belong to the union is so bad that he might just as well belong to it. That is the way I have found it. The position of the man who does not belong to a union is not a happy one, and I am inclined to agree that it should

not be, but when you get to the closed shop, that is going a little far. There is another point that bothers me. Your brief is very splendid, and all that, but there is in this country an opinion that labour unions are pure and undefiled. It seems to me that the matter of picketing is something which concerns the public.

Mr. WISMER: You deal with picketing in section 87 of the criminal code.

Hon. Mr. KINLEY: Yes.

Mr. WISMER: Therefore we have not raised the point in here, since we think of this as being the constitution of Canada. The reason we dealt with section 98 of the criminal code, is that we do not like to see the constitution of Canada capable of being set aside by the action of a parliament which, under certain conditions which exist just for the moment, could take another law and set it all aside. For instance, it is possible to say that by reason of the Labour Relations Act of Canada the employer has his rights and the employee has his, and they must negotiate and conciliate their differences but, at the same time, it is possible to amend another act, the criminal code, and say that under certain circumstances no one shall be able to do certain things. That is what we are concerned about. It is easy to get these anomalies into the law. As to the fundamental rights and freedoms of all people, in so far as they can be stated, they should be put into one place where they cannot easily be set aside; then when something happens, prudent men will sit down and ask "How can we protect ourselves against this eventuality without some setting aside of our rights and freedoms?"

The CHAIRMAN: You would include in a bill of rights, or an amendment to the constitution, only the most fundamental of the human rights, would you not?

Mr. WISMER: Yes; I think you have stated them all, except the economic ones.

The CHAIRMAN: The economic rights of man are not in the resolution at all; they are political rights, not economic rights. The right to work is not mentioned in this resolution.

Mr. WISMER: I might draw to your attention that in the motion there was included as article 2, no one shall be held in slavery or servitude. In other words, no one shall be made to work; that is really what it says. We would like it also stated that while he may not be made to work, he has a right to work.

The CHAIRMAN: Not necessarily to work for any particular employer or any place he likes.

Mr. WISMER: No—that he has the right to work and the free choice of employment. In other words, it is the individual's responsibility.

Hon. Mr. KINLEY: But whose obligation is it? If he has the right to work somebody has got to give him work, unless he is independent and good enough to get it for himself. Now whose obligation is it?

Mr. WISMER: Could we put it this way: that if he has the right to work, and there is not any work, he has the right, on his own, or in free association with others, to come and say "Create work, in order to allow us to keep an economic existence."

Hon. Mr. KINLEY: This matter of picketing; you do not affirm as a labour leader that anything more than peaceful picketing should be permitted? You will admit that picketing should be peaceful.

Mr. WISMER: I think the law should state "peaceful picketing" and that the rest of it is a matter of administration.

Hon. Mr. KINLEY: You object to the use of force. What is the force that controls and maintains order in the country? If we do not use the police or some other force, not in a labour dispute but to make people obey the law, how else are you going to do it?

Mr. WISMER: I think we agree that we are very much in favour of a police force to maintain law and order, to enforce the law, but we have had too many examples in the past of excited authority sending in police to break up the pickets, to interfere in labour disputes when such interference was not necessary; no one was breaking the law; the picketing that was going on was quite proper.

Hon. Mr. BAIRD: Why do you have pickets?

Mr. WISMER: The pickets are for the purpose of telling men when there is a strike on in a plant that their brothers are out on strike, and asking them not to go in and break the strike.

Hon. Mr. BAIRD: Asking them not to go in, and in many cases keeping them from doing so by force.

Mr. WISMER: Oh, no, there is no force.

Hon. Mr. BAIRD: It has been done.

Mr. WISMER: We know it has been done, but we are not asking that that be written into the picketing law. We certainly are asking for a right which has been in existence for many years, the right to stand at the gate and say to other people, "There is a strike on."

Hon. Mr. REID: I would like to direct a question to the chairman. The difficulty is with economic rights, not political rights. If a man has not the right to work he has nothing. When a man has not the right to work, all other freedoms fade away, because he will die.

The CHAIRMAN: Bread and butter is the first consideration.

Hon. Mr. REID: I do not see how you can leave it out. The right to work must be fundamental. Without that, to occupy one's self with other freedoms is a waste of time.

The CHAIRMAN: Quite right: the right to eat is a basic freedom.

Mr. WISMER: And therefore fundamental, and therefore should be written in a statement of fundamental rights.

Hon. Mr. KINLEY: But I think it is salutary to point out that there are always faults on both sides, and when picketing is carried on forcibly, so as to prevent any entry to or egress from a plant by the executives or people who may be engaged on purposes not connected with a union, that is going a long way, and it rather shocks people in Canada to see the extent to which these things are carried on.

Mr. WISMER: Mr. Chairman, we have some interesting people in the labour movement whose influence we have been trying to reduce of recent years; but those who are not of that ilk would not think of stopping executives and people in offices and so on from going in. But if you think of the struggle, as I am sure you have, as a purely economic struggle between two groups, is not the effect that of maintaining the safety of the state when we do not let anybody in to break up or cause trouble which will destroy our ability to bring the boss to time.

Hon. Mr. BAIRD: That is not fundamental.

Mr. WISMER: Picketing, of course, is not fundamental; it is purely a technique. The right to strike is fundamental.

Hon. Mr. REID: Look at the question of the right to work and deal with it in its broad aspect, not in its narrow one, and with no thought of accusing the Trades and Labour Council: what about the trade union which denies a man the right to belong to that union? In considering this question the committee should look at it as a whole. I agree with unionism, as far as that goes, but I think the time has come in Canada when we should take note of the right of a workman to join a union, because there are those who have been refused admittance. I know of no cases under the Trades and Labour Council, but I feel sure that their representatives are aware of cases in other unions. I feel that this is a serious matter. The right to work is, one might almost say, the only right. If I have no right to work and cannot get work, I cannot eat. All other rights fade away. Yet we have in this country unions which deny a man the right to work. This is a most important consideration when we are discussing the matter of fundamental rights.

Hon. Mr. DAVID: You said, sir, a moment ago that picketing is done for the purpose of having your working men or employees who are members of the union notified that there is a strike on. Very well. But after a strike has been declared and has been on for a week, ten days, fifteen days, a month or two months, do you need picketing?

Mr. WISMER: Yes, it is more often needed later.

Hon. Mr. DAVID: For what reason?

Mr. WISMER: For the same reason.

Hon. Mr. DAVID: To notify men that there is a strike on? They all know it at that time.

Mr. JODOIN: There may be some people from outside coming along who do not know anything about it.

Hon. Mr. DAVID: When they are not members of the union and want to go in, do you stop them?

Mr. JODOIN: We stop them in a peaceful manner, as we have at our disposal, by asking them not to.

The CHAIRMAN: It is a question of persuasion not to go in there, as well as notification?

Hon. Mr. DAVID: It is more fists than anything, I think.

Mr. JODOIN: I do not agree.

Hon. Mr. DAVID: I think you have the right to picket, but when it lasts more than twenty-four or forty-eight hours I cannot take it that it is just to notify employees that there is a strike.

Hon. Mr. KINLEY: I see some people down here who have been carrying on for more than a year. It is easy for peaceful picketing to develop into something else.

The CHAIRMAN: We have two more delegations, and only three-quarters of an hour, and we want to hear them.

Hon. Mr. DOONE: On page 12 of your brief is a reference to something about which I think I asked the last witness. Do you seriously think that our Indian population are sufficiently instructed at the present time to take their place in society along with the other citizens of Canada, and that they should no longer be considered wards of the state?

Mr. WISMER: I do not think there is any reason why Indians on reservation property should not remain there and still be treated perhaps even a little better than they are treated under our laws now. I do not believe that there is sufficient reason to deny these people the right to vote in full citizenship.

Hon. Mr. DOONE: I know it is necessary to do that in certain areas.

Mr. JODOIN: It is the duty of the government to educate the Indians in the proper manner.

Hon. Mr. DOONE: Oh, yes, that is true.

Hon. Mr. KINLEY: The difficulty in connection with the Canadian Seamen's Union seems to be detrimental to Canada generally. What is the position now with regard to seamen in Canada and the unions?

Mr. WISMER: There is still the Canadian Seamen's Union and there is a Brotherhood of Seamen. Those are the two national organizations, and there is an international organization operating in the country called the Seafarers International Union, which is one of the unions affiliated with the American Federation of Labour.

Hon. Mr. KINLEY: And they are all in conflict?

Mr. WISMER: Yes.

Hon. Mr. KINLEY: Because of the nature of the employment of merchant seamen and the fact that they belong to practically any part of the world, I imagine it would be very difficult to find out which union had the binding rights. For instance, if I owned a ship, what union would have the binding rights of my seamen?

Mr. JODOIN: We shall try to define that and let you know accordingly. We know exactly what you mean.

Mr. WISMER: It is not so difficult where you have ships operating the year round, but on the Great Lakes and coastal waters it is a different matter.

Hon. Mr. REID: On page 13 of your brief you say that you would recommend that, "Subsection 1 of this article be amended to read, 'Everyone has the right to own or lease property alone as well as in association with others'". What about the leasing of property?

Mr. WISMER: In article 14 it provides that, "Everyone has the right to own property alone as well as in association with others". We are suggesting that that be extended to include "own or lease".

Hon. Mr. BAIRD: In other words, you have not got the power to lease here.

Mr. WISMER: You are setting down the fundamental rights in article 14 to own property, and you say that you cannot be arbitrarily moved from the property. A large percentage of the people for whom we speak will never own any property, but they should have the right to lease property to provide shelter for their families.

Hon. Mr. KINLEY: Can you conceive of an instance where a man would not be able to lease property in Canada? Does any such condition exist?

Mr. WISMER: There are people in certain areas in Canada who have great difficulty because they are discriminated against.

Hon. Mr. REID: Leasing is tied up in the same way as ownership, and I was wondering if you meant there that if a person had a home and he wanted to lease it he could do so.

Mr. WISMER: Having considered this matter a great deal with many people I agree that the leasing problem is a very difficult one, but in an industrial state the right to lease property will become of paramount importance to a vast number of people, even though today we think more of private ownership of property. The private leasing of property will become a great problem.

The CHAIRMAN: I am sure that when the drafters of the Declaration used the word "own" they thought they were including leasing, which is an interest in property.

Hon. Mr. KINLEY: When there is a leasing it means that two people have got to get together. The man who is leasing the property has to get together and agree with the man to whom he is leasing, and I do not see where the right to lease is establishing anything.

Hon. Mr. REID: If it is put into effect it might mean that if I have a place to rent I may not refuse to lease it to a person whom I consider to be an undesirable character. He might say, "I have the right to lease".

Mr. WISMER: Look at it in this way: In the industrial development of our country we might bring in any number of people from some particular section of the world, and it is when they arrive in big groups that antagonism grows up against them. We would like to see something written into our laws which would prevent a province or community from saying, "You cannot lease property to these people for shelter".

Hon. Mr. KINLEY: In a certain area.

Mr. WISMER: In other words, that type of thing could not happen when the fundamental law of Canada provides that a man has the right to own property and he has the right to lease property.

Hon. Mr. DAVID: I thought perhaps you had in mind large families who are refused shelter?

Mr. WISMER: Yes, that is a very serious problem.

Hon. Mr. DAVID: You see it advertised in the newspapers, "No children".

Mr. JODOIN: "No children and no dogs".

Hon. Mr. REID: Human nature is a strange thing. I can remember one member of parliament who, in chiding me about my views regarding the Japanese, thought it all right to be one of a group of landowners who prohibited, by an agreement amongst themselves, the leasing of property to those of the Jewish race.

Hon. Mr. DAVID: The Lafayette Hotel at Old Orchard Beach used to have a sign, "No Jews or dogs allowed here."

The CHAIRMAN: That sort of thing cannot be done any more in Ontario.

Hon. Mr. REID: Yes, but it is still carried on without advertising.

The CHAIRMAN: Well, there is a bill against discrimination before the legislature now.

We have a large delegation from Toronto, representing the Toronto World Federalists. The delegates include Mrs. Gordon N. Kennedy, Mrs. Charles E. Catto, Professor D. H. Hamly, Mrs. D. C. MacGregor and Mr. Harold Miller.

Mrs. GORDON N. KENNEDY: Mr. Chairman and honourable senators, the Toronto World Federalists are deeply appreciative of the democratic privilege extended to us in this appointment. We are a group concerned with study and education in an effort to acquaint ourselves and the public with the problems of world federal government.

The Chicago committee to frame a world Constitution which was formed by Robert M. Hutchins, President of Chicago University, the day after the bombing of Hiroshima, considers the two questions, human rights and duties. We subscribe to this approach, fully realizing the responsibility of man, individually and collectively, toward welfare throughout the world.

We also subscribe to the brief presented by the Civil Liberties Association of Toronto.

The CHAIRMAN: That was the brief presented by Mr. Himel?

Mrs. KENNEDY: Yes. I should like to ask Mrs. Catto to read our brief, and to have comments by other members of the delegation. Professor Hamly will give the academic view. Mrs. MacGregor will present the significance of human rights in world relations, and Mr. Miller will make a concluding statement.

The CHAIRMAN: Then I will call upon Mrs. Catto to present the brief.

Mrs. MARION CATTO: Mr. Chairman, the following is the brief submitted by the Toronto World Federalists to the Senate Committee on Human Rights.

Dear Senator ROEBUCK: We as World Federalists, are primarily concerned with human welfare at the international level, but we consider that human rights must be recognized at all levels of government.

We believe in the value of life and seek to promote the right to life by the elimination of war through a system of world federal government. At the same time we suggest that Canada, subscribing as she does to the United Nations "Universal Declaration of Human Rights", would be in a stronger position in world councils if there were explicit evidence that human rights were assured for all who live in Canada.

Your Bill of Rights, stated in simple language, will enable all citizens, including those newly welcomed to our land, to know and have their basis rights. The United Nations Declaration, in its ultimate fulfilment, must spring from the soil of the grass roots of human rights in *all* countries of the world.

Therefore, as World Federalists in Canada, we urge the incorporation in the Canadian Constitution of a potent Bill of Rights.

Senator Roebuck and honourable members of the Senate Committee, including Monsieur the Honourable Senator from Quebec—*Je suis charmé de vous voir*—I should just like to say here that we do not want you to read our brief and file it away and forget about it. It is true that we must have research, but research must be followed by action.

We are living in what is perhaps the most critical period in the whole history of man, because, for the first time, he holds in his hand the weapon of his own destruction. We know that man has behaved ignobly with regard to human rights on many occasions within the last few years, but we also know that he has great aspirations and potentialities. You, honourable senators, are aware of this, or you would not be sitting here, doing what you are doing now. I believe you have a key to the problem of man's future welfare, in human rights and fundamental freedoms. Use it. Continue in your endeavour and do not rest until we have a Bill of Rights incorporated into the Canadian constitution.

But that is not all. It is only part of the task. We, as World Federalists, would like to see you go to work again and not rest until you have been instrumental in helping to devise a constitution for world government set foursquare upon article 3 of the United Nations Declaration—everyone has the right to life, liberty and security of person. Only with world federal government, we believe, will men beat their atom bombs into tractors and, building on the firm foundation of human rights and fundamental freedoms, cease to learn war any more.

The CHAIRMAN: Thank you. That is beautifully put.

Hon. Mr. DAVID: It is.

The CHAIRMAN: Now, I will call upon Professor Hamly.

Professor D. H. HAMLY: Mr. Chairman, honourable senators, I believe that Canada should have a Bill of Human Rights which will make it clear both to Canadians and to others that Canadian law does uphold the fundamental rights of men. This would help prepare our country to take its place in the democratic world government which we hope to see in action.

Many Canadians who, like myself, believe that Canada has, in general given fair treatment to men without a Bill of Rights, feel that a marked improvement would occur if Canadians declared, to themselves and to the world, what human rights they unreservedly support.

Human rights vary in their importance to the individual. Now I, as a university professor, feel that academic freedom is of great importance to Canada, for it is basic to real advances in culture and standards of living. In fact, many hold that the rise and fall of nationalistic cultures are related to changes in academic freedom. Further, it is a fact that Canadians are discussing the maintenance of the high level of academic freedom in Canada. This freedom would appear to be best safeguarded by a Bill of Rights protecting (a) the right to freedom of thought and religion; (b) the right to freedom of opinion and expression; and (c) the right to freedom of assembly and association. With these basic rights safeguarded, a legal meaning would be given to the motto of a Canadian university, "The truth shall make you free".

The CHAIRMAN: Thank you, Professor Hamly. May I ask you if you have read the speech on world government that was made by Senator Euler?

Professor HAMLY: Yes, sir.

The CHAIRMAN: Did he express in that speech the ideas that you advocate?

Professor HAMLY: As I remember it, he did.

Mr. MILLER: Senator Euler did not go very far, as I remember his speech. He called on senators to take an interest in the problem of world federalism, but I think he only wished to have the possibilities explored.

Hon. Mr. REID: Professor Hamly, may I ask you a question? Most, if not all, of the briefs that have been presented here have advocated, as you have this morning, freedom of thought. That has rather intrigued me, because I always was of the opinion that a man could think what he liked, wherever he happened to be, in prison or anywhere else. I always have felt that my thoughts were free, but that I might not be able to express all of them. What is meant when freedom of thought is advocated? As I understand it, everyone has freedom of thought, and it is not necessary to provide for this in a statute.

The CHAIRMAN: There is a classic statement by one of the English judges, that a man's thought is not triable.

Hon. Mr. DAVID: It is the free expression of thought that is advocated in the briefs.

Hon. Mr. REID: Expression of thought is another matter, but I do not see how anyone can prevent me from thinking what I wish. We have not yet reached a point where people can read one another's minds.

Mrs. CATTO: There is no evidence of a person's thoughts until they are expressed.

Hon. Mr. REID: Seeing that we have a professor here, I should like to ask him what is meant by freedom of thought.

Professor HAMLY: Mr. Chairman, I think the honourable senator has raised a very interesting point. It is commonly stated that individuals ought to have freedom of thought, when actually I believe the meaning is that we ought to have freedom of expression. These are two different things, quite clearly, but freedom of thought happens to be the conventional thing which is

advocated. I agree with you, sir, that this does not mean very much unless there is freedom of expression. Many good ideas have died aborning, because nobody expressed them.

Hon. Mr. REID: Everybody wants to couple together freedom of thought and expression . . .

Hon. Mr. PETTEN: Mr. Chairman, do you know what the Japanese have done along those lines?

The CHAIRMAN: No.

Hon. Mr. PETTEN: Do you know, Senator Reid?

Hon. Mr. REID: No.

Hon. Mr. PETTEN: According to my reading, they have carried out freedom of thought.

Hon. Mr. REID: How could they in any way read a man's thoughts?

Hon. Mr. PETTEN: It was very interesting, the way they went about it; it was sometimes, shall I say, crude, and sometimes very rough, but it is a really interesting subject.

Hon. Mr. DAVID: Probably what Senator Petten means is that the Japanese had no right to think the Emperor was not a God.

Hon. Mr. PETTEN: They actually had a department of the government trying to find out what the people were thinking.

Hon. Mr. REID: Thought police.

Hon. Mr. PETTEN: Yes.

Hon. Mr. REID: How can one determine what another's thoughts are?

Hon. Mr. PETTEN: A man could be imprisoned with a group of beasts, and still in his heart be praying to God, and they would not know it. He would still have freedom of thought. I think they are wrong: I feel that my thoughts are free.

Professor HAMLY: Mr. Chairman, I feel that the question of the Japanese thought police brings out this question very neatly. It comes down to the point, has anybody any power to find out what a man is thinking? That is, assuming he has normal self control. I believe not. But under ordinary conditions of expression we consider that freedom of thought means freedom of expression.

Hon. Mr. DAVID: You would bar hypnotists who might get your thoughts against your will.

Professor HAMLY: Yes.

Hon. Mr. KINLEY: Freedom of thought is what we are doing now.

Hon. Mr. DAVID: Exactly.

Hon. Mr. KINLEY: Freedom to talk to people, that is freedom of thought.

Hon. Mr. PETTEN: That is freedom of expression.

Hon. Mr. KINLEY: Thought is not free unless it gets outside.

Hon. Mr. DAVID: Just for the sake of discussion, what about the lie detector? There is no more freedom of thought, if the lie detector is true.

Hon. Mr. REID: Yes, you still have freedom of thought. The lie detector just picks out what your thoughts are.

Hon. Mr. DAVID: Not according to what I saw. If one speaks an untruth the machine will immediately show that it is an untruth.

Hon. Mr. REID: Let us proceed.

The CHAIRMAN: Will you proceed, Mrs. MacGregor.

Mrs. D. C. MACGREGOR: Mr. Chairman, honourable senators, I should like to discuss our suggestion that Canada would be in a stronger position in world

councils if there were explicit evidence that human rights were assured for all who live in Canada. Our country has acknowledged this in principle by signing the Atlantic Pact which states "The parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions".

We are now engaged in a great ideological war which may determine whether our form of government, or any form of government based on the rights and freedoms of citizens, shall survive. To succeed in this form of warfare we must convince the world that we mean what we say about freedom.

We do not need to anticipate the future to see that this is true. Consider the impact upon the rest of the Commonwealth of South Africa's position on human rights and freedoms. South Africa's stand on the issue of race equality represents a lost battle for democracy in the "Cold War". Britain has made tremendous efforts to educate her colonial peoples in her culture and her democratic institutions. There are 3,500 blacks in her universities today. They know how the white race treats the black in South Africa, and in Britain they are treated with some prejudice. The communists court them and they are assured that there is no racial discrimination in Russia. It is most natural that some of these students should return to the Colonies to teach communism to their fellows, and it is well known that disaffection in the Crown Colonies has reached alarming proportions.

Britain's position on democracy stands in question because South Africa is part of the Commonwealth. But even as South Africa by her denial of human rights has weakened democracy's cause before a doubtful world, Canada can, by passing at this time, a forceful bill of rights strengthen the moral position of democracy.

Hon. Mr. REID: Concerning your statement about Britain and the blacks, I think it is a little overstated in so far as the people in the British Isles are concerned. They have the same full rights as the subjects, but there is this difference, if I can express it. It is like a man who has been in the penitentiary or jail; he comes out, and his neighbours and people have something against him. They do not wish to associate with him. So with the blacks in Britain there is no great racial trouble, but the people just do not like them.

Mrs. MACGREGOR: I think Britain's position for many years on racial discrimination has been beyond reproach, but as I was told about these students, landladies, tram conductors and similar people do discriminate against them, and show prejudice. It is that slight prejudice in Britain, against the background of the attitude in South Africa that I want to bring out.

Hon. Mr. DAVID: Do the barbers in England make any discrimination against these blacks?

Mrs. MACGREGOR: I am not competent to answer that question.

Hon. Mr. DOONE: Is not the big problem in South Africa the East Indian situation?

Mrs. MACGREGOR: That of course brings in another point, which I did not care to include, but Ghandi learned a lot of his ideas in his twenty years in South Africa, and probably what has happened recently as to India leaving the Empire and so forth, was probably much hastened by his experiences in South Africa.

Hon. Mr. DOONE: The East Indian is excluded from Ceylon as much as he is from South Africa. I believe the problem there is an economic one; they have a much lower standard of living, and the result is a question of work and survival for the native of South Africa. That is the white native.

Mrs. MACGREGOR: I really was not hoping to discuss the South African situation; I am not competent to do so. All I wished to do was try to get us away from our country, and we could perhaps see ourselves as others may see us.

Hon. Mr. KINLEY: I have heard that question discussed in the United Nations; a lady from India made a violent attack on General Smuts. I know it is quite an involved question.

Hon. Mr. DOONE: It is very involved.

Hon. Mr. REID: There is a great deal of merit in your suggestion for our doing certain things to strengthen our position amongst other nations. I know that at conferences amongst nations there are many times incidents which have happened in Canada are brought up, and they weaken our advocacy on human rights.

Mrs. MACGREGOR: Our own guilt on these questions is the problem. Whenever we start discussing the problems of Russia we are met with the counter problem of the blacks in the southern part of the United States and the Padlock Law in Quebec. It is our own guilt on these questions that weakens our position.

Hon. Mr. KINLEY: The situation as regards the black in the United States is more difficult than in any country in the world. In some places in the street cars all the whites will stand when a black person takes a seat; no white person will sit by him. The feeling in the southern United States is very bitter. Yet they have anti-discrimination laws.

Mrs. MACGREGOR: Might I say, though, that as far as I know the United States constitution was the first law which in general tended to work towards the abolition of slavery, and since then the United States has progressed in the direction of rights for the coloured population. South Africa has been going in the opposite direction.

Hon. Mr. DOONE: There is a difference in the balance of population in South Africa. There are only about two million whites, but there are many millions of black people.

Hon. Mr. KINLEY: They claim that it is a question of survival.

Hon. Mr. DOONE: They have a serious problem.

Mr. Harold A. MILLER: Mr. Chairman and gentlemen, I would like first to apologize for not providing you all with copies of our brief. I think you understand the reason. We originally sent only the brief which Mrs. Catto has read to you as a manuscript, and we mailed that to Senator Roebuck, and then he very kindly replied offering us the opportunity to come here, and he mentioned that there would be somewhere about half an hour for us to present our views a little more completely. This happened so recently that we did not put our thoughts and our material in order quickly enough to provide you with copies.

Toronto World Federalists, and we feel sure the other federalist groups in Ottawa, Montreal, Winnipeg, Saskatoon and Vancouver, share with their fellow Canadians the desire for an effective bill of rights.

But after every actual or potential threat to the liberties of Canadians, arising in Canada, has been considered, we feel that the threat to Canadian liberties implicit in a third world war would be immeasurably greater.

In times of danger there are always those who will plead the need for radical or novel measures. But some dangers with which man has recurring experience are best faced with proven remedies. It may seem strange to say that any proven

remedy has yet been found to deal with threats to the peace, and yet history shows that breaches of the peace have been remedied in limited areas by the proven methods of law and order embodied in representative federal government.

While Canadians prepare a bill of rights, less privileged peoples look over our shoulders. If we are to lead these peoples to finer democratic institutions, it will only be possible when they will voluntarily follow, and they will only follow when we accept principles and standards clearly above the level of purely national and regional advantage.

By all means let Canada enact a bill of rights. May it be the highwater mark, to date, in the long evolution of human liberty. But let us also accept our responsibility to lead others to the stability of federal government. Let us raise a standard to which, not only in Canada but throughout the world, the wise and honest may repair. Only in security from war will the human rights of Canadians be secure.

Hon. Mr. KINLEY: All these presentations are extremely interesting, and this one seems to be on a very high level.

The CHAIRMAN: A very high level.

Hon. Mr. DAVID: Hear, hear.

Hon. Mr. KINLEY: The thought occurred to me, are we putting first things first? For instance, we have in Canada the statute known as the Lord's Day Act. It seems to me that we might give some consideration to the preservation of the Lord's Day as a national observance, instead of leaving it to the provinces, or even to the municipalities. I think the Prime Minister struck the right note the other day in a remarkable speech in which he said that spiritual values were the things we should put foremost in this country. It is really rather refreshing to have listened to this delegation, which does not deal merely with material things. I believe we should look with considerable disfavour on the commercialization of the Sabbath. If we do not retain its distinctive character, and ignore the fundamentals which are based on the teachings of Christianity, we shall not be putting first things first.

The CHAIRMAN: Senator, may I carry your idea a little further by putting on the record a letter which I have received from Audrey Hussey, South Bathurst, New Brunswick:

"I think it was very wise of you to propose a Bill of Human Rights and Fundamental Freedoms. They are well defined and will make a very appropriate reference for our present day generation.

But I wish to call to your attention a very important matter; and I would like to suggest an essential addition to this preamble. Being a Christian country, Canada must influence other countries by her example of Christian democracy and ideology. I think that it is essentially necessary to submit the Christian element in this Bill of Rights.

A Christian State is based on reason and God's law, so would you consider it reasonable to leave God out of such an important matter? We know that the powers of jurisdiction are God-given powers. Therefore, I as a Canadian citizen, propose that the Canadian Government give proper reference to God as the giver of those inalienable rights, that must be protected."

Hon. Mr. DAVID: Hear, hear.

The CHAIRMAN: I am going to put that on the record. I have no doubt this delegation agrees with it.

Hon. Mr. DOONE: I have a letter, of which I am going to read only part. It is from Mrs. Anne Marie McCormick, Fredericton, written under date April 25:

"In your statement approving a proposed bill of rights which was quoted in the pamphlet 'The Senate Speaks' you mentioned the dignity of man as a being possessed of a soul fashioned in the likeness of the Divinity. I think that man's dignity as a creature of God and the fact that all his rights come from God should be specifically mentioned in the bill."

That is addressed to myself, and is along the same lines as the remarks we have just heard.

The CHAIRMAN: It will be questioned, I think, why we have not received a representation of some kind from the Canadian Bar Association, and will not before we come to a conclusion; so I want to put on the record that they have been invited to be here.

I have a letter from their secretary written from Saint John, N.B. It reads: "Dear Senator Roebuck:

Your letters addressed to Mr. S. H. McCuaig, K.C., the immediate past president of the Canadian Bar Association, and to Mr. A. M. Laidlaw, the secretary-treasurer, have reached me. Heretofore at its annual meetings the Canadian Bar Association has considered reports of its Special Committee on the Declaration of the United Nations on Human Rights and Fundamental Freedoms as well as the proposed covenant relating thereto. The association however, has not expressed its views on these very large and very difficult questions, nor has any committee been authorized to speak on behalf of the association with regard to them.

In the circumstances it will be impossible for the association to present an expression of opinion to the committee of the Senate. I do wish to thank you as chairman for your kindness in giving the association the opportunity of presenting a brief and speaking in support of it."

I thought it was rather essential to our records to make it clear that the Law Association has been considering this matter but is not in a position to speak for the Board at the moment; otherwise they would no doubt be here.

Hon. Mr. KINLEY: We had a very fine brief from the Deputy Minister of Justice.

The CHAIRMAN: Yes, and a splendid statement from Professor Scott, speaking as an eminent lawyer of the intellectual type. However, the Bar Association is not in a position to respond to our call. It is not because we did not notify them.

The committee adjourned until tomorrow, Wednesday, May 3, 1950, at 10.30 a.m.

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THE SENATE OF CANADA



PROCEEDINGS OF THE SPECIAL COMMITTEE ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

No. 6

WEDNESDAY MAY 3, 1950

CHAIRMAN:

The Honourable Arthur W. Roebuck

WITNESSES:

- Mr. Leon Mayrand, Assistant Under-Secretary of State for External Affairs.
- Mr. A. J. Pick, Department of External Affairs, Ottawa.
- Rev. Dr. Wm. Noyes, Secretary, Committee for the Repeal of the Chinese Immigration Law.
- Mr. B. K. Sandwell, Editor, Saturday Night, Toronto.
- Mr. F. A. Brewin, K.C., Canadian Committee for a Bill of Rights.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for 20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Every has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Every one has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood.

That the said Committee shall have authority to send for persons, papers and records.

Attest:

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, 3 May, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators Roebuck, Chairman; Baird, David, Davies, Doone, Gladstone, Grant, Petten, Turgeon, Wood—10.

The official reporters of the Senate were in attendance.

Mr. Leon Mayrand, Assistant Under-Secretary of State for External Affairs, Mr. A. J. Pick, of the Department of External Affairs, Rev. Dr. Wm. Noyes, Secretary of the Committee for the Repeal of the Chinese Immigration Law, Mr. B. K. Sandwell, Editor of the Saturday Night, Toronto, and Mr. F. A. Brewin, K.C., of the Canadian Committee for a Bill of Rights, were present.

Mr. Mayrand, Mr. Sandwell and Dr. Noyes read briefs to the Committee, and all witnesses were questioned by Members of the Committee.

At 12.30 p.m. the Committee adjourned until Tuesday, May 9, 1950, at 10.30 a.m.

Attest.

James H. Johnstone,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

WEDNESDAY, May 3, 1950.

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10:30 a.m.

Hon. Mr. Roebuck in the chair.

The CHAIRMAN: Gentlemen, let us come to order. Our visitors should be informed that this is an exceedingly heavy day in the Senate program; the committees are busy, and we have a general caucus of the Liberal party meeting at the same time. I personally am very grateful to those senators who have stayed with this committee instead of being enticed away by the rest of the activities. In spite of temptation to belong to other nations, they still remain with Civil Liberties.

I have had sent to me a number of memoranda put out by the United Nations, which I will now have distributed; the remainder of the copies I shall forward to those who have taken an interest in our program, and who are not here today.

Gentlemen, we have a very fine program before us. First and foremost we have representing our own External Affairs, Mr. Leon Mayrand, Assistant Under-Secretary of State for External Affairs, representing Mr. Heeney the Under-Secretary of State for External Affairs; and with him is Mr. Alfred Pick, an officer of the Legal Division of the Department of External Affairs.

Mr. Mayrand, you have the floor.

Mr. LEON MAYRAND: Mr. Chairman, the memorandum from our Department which you have distributed was prepared before Mr. King Gordon of the Human Rights Division of the United Nations Secretariat made a broad statement on the subject of human rights as seen from Lake Success.

With a view to avoiding repetitions, I propose, with your permission, not to deal with those parts of our memorandum which have been covered sufficiently by Mr. Gordon. I propose, rather, to expand a little more, first, on the role played so far by Canadian representatives at the United Nations on the problem of human rights; and, secondly, on some aspects of the problems which we shall have to face in connection with the Draft International Covenant on Human Rights.

The role which we have played so far has not been, and indeed could hardly have been, a very active one. There are two principal reasons for this. In the first place, although Canada has been a member of ECOSOC (Economic and Social Council—18 members) from January 12, 1946, to December 31, 1948, and has been re-elected for a three-year period beginning January 1, 1950, Canada has never been a member of the Commission on Human Rights created by the Economic and Social Council in June 1946. Now, except for the first part of the Third General Assembly (Paris, 1948), the question of human rights has been mostly the concern of the Human Rights Commission—where, I repeat, we were not represented. In other words, we have not participated in the discussions at the main working level.

The CHAIRMAN: I might ask you: we were not a member of the committee through lack of interest on the part of Canada or its representatives?

Mr. MAYRAND: Certainly not, but we were not elected on that committee of twelve members.

The other main reason for the modesty of our participation was emphasized in the report of the Parliamentary Joint Committee on Human Rights dated June 1948 (House of Commons, Votes and Proceedings, June 25, 1948). I refer to the constitutional situation in Canada as a result of the provincial sphere of authority. When a Canadian delegation first came to grips with the problem, at the Paris General Assembly of 1948, there was before us an elaborate draft declaration inspired by the noblest of ideals—so noble that we could not becomingly open fire on it for the mere reason that our constitution made it difficult for the Canadian government to ensure implementation, more especially because the declaration was not intended to be a legally binding text, but a mere “common standard of achievement”.

The CHAIRMAN: What do you mean by “open fire on it”? Attack it?

Mr. MAYRAND: Say it was too vague and too involved to be easily implemented and so forth.

All this can be perceived in Mr. Pearson's statement of December 10, 1948, at the Paris General Assembly. According to the usual practice before one dares to criticize a document of that calibre, Mr. Pearson first paid homage to the general principles contained in the declaration, and then pointed to its unavoidable vagueness and to our special constitutional difficulties. Mr. Pearson thereupon stated that, because of our “reservations on details” in the draft declaration, the Canadian delegation had abstained when the declaration as a whole had been put to the vote in committee; but that, having made our position clear, he would now vote in favour of the resolution “in the hope that it will mark a milestone in humanity's upward march”. Incidentally, the articles of the draft declaration on which we abstained in committee were Articles 23 to 27 inclusive.

The CHAIRMAN: Can you indicate the general tenor of Articles 23 to 27, so that we will know what it was you abstained from, without checking?

Mr. MAYRAND: Well, it is about social security, the right to work, the right to rest, standards of living, the right to education, and the right to cultural life.

The CHAIRMAN: Education, because it is under provincial jurisdiction?

Mr. MAYRAND: Yes, mostly.

The CHAIRMAN: Culture, I suppose, for the same reason?

Mr. MAYRAND: Yes.

The CHAIRMAN: The right to work, because it is economic and probably under provincial jurisdiction?

Mr. MAYRAND: Yes. They were the articles in which the provinces were mostly concerned.

I should like to add that, while Canada has never been represented on the Human Rights Commission, we have been represented on one of its two sub-commissions, namely the Sub-Commission on Freedom of Information. Mr. G. V. Ferguson, editor of the *Montreal Star*, served on the Sub-Commission on Freedom of Information from March 1947 to April 1949.

As for the achievements of the United Nations regarding this particular human right of freedom of information, I might recall the Geneva Conference of March-April 1948, at which there were representatives of the Canadian daily and periodical press, the CBC and the Department of External Affairs. The agenda had been prepared by the Sub-Commission on Freedom of Information and there emerged three draft conventions—namely: one on the international transmission of news; one on the right of correction; and one on the general principles of freedom of information.

The CHAIRMAN: The “right of correction”: what does that mean?

Mr. MAYRAND: The right of rectification when there is false news; the right to communicate and rectify a statement that has been made in the press.

These three draft conventions were discussed during the second part of the Third General Assembly in the spring of 1949; and I happened to be the Canadian representative at those discussions. The result was a merger of draft conventions 1 and 2 into a single one called the Convention on the International Transmission of News and the Right of Correction. As for Draft Convention No. 3 on the Principles of Freedom of Information—the more basic one—we had to abandon it until the Fourth General Assembly; and then, last autumn, it was decided again to suspend action until the Commission on Human Rights has included adequate provisions on freedom of information in the Draft International Covenant on Human Rights. Actually the Commission on Human Rights has now adopted an article on freedom of information for the covenant, but it also proposes to recommend that a full convention on freedom of information be concluded at the forthcoming Fifth General Assembly, next September.

And I now pass to the second part of my statement, in which I shall examine some of the particular questions arising in connection with the draft International Covenant on Human Rights. Our delegates will likely have to deal with these first at the session of ECOSOC which will open in Geneva on July 3; and, secondly, at the Fifth General Assembly next September. You have these questions listed in paragraph 19 of our memorandum.

✓ (a) *Definition of Rights*

As the covenant is to be a legal document, differing in this respect from the declaration it cannot very well be left in the form of a general statement of principles of human rights and fundamental freedoms. The rights to be enjoyed and protected must obviously be expressed in the covenant in statutory language, precise and definite. This raises the problem whether it will be possible to set forth certain of the basic human rights in legal form without listing under many, if not all of them, the various categories of limitations and exceptions.

The present draft Article 4, which is a general introductory article, provides that in time of war or other public emergency a state may derogate from the specific rights set forth in a list of articles of the Convention. The articles for inclusion in this list are still to be determined. Now, while such an article seems desirable, in view of the necessities of wartime, as experienced by many countries, it nevertheless has dangerous implications.

There has also been a suggestion that there should be a general clause stating that the exercise of all or most of the rights can be subject to limitations necessary to ensure national security, public order, health, morals or the rights and freedoms of others. This idea appears to have been generally abandoned and an attempt is being made instead to list under each article the nature of the limitations if any that may be imposed on the right described in the article.

The problem may be illustrated by referring to three of the most important articles: Article 5, which recognizes the right to life; Article 9, which proclaims the right to liberty; and Article 17, which sets forth the freedom of information.

At the current Session at Lake Success, the United Kingdom has proposed the addition of three limitations on the right to life, viz., killing in quelling a riot, killing in self-defence, and unintentional killing to effect a lawful arrest. The United States considered this approach impractical and pointed out that there are at least seven valid exceptions which were omitted from the United Kingdom proposal. It stated that an article on the right to life with ten exceptions would be impractical and that it is scarcely possible to foresee all possible exceptions (see document E/CN.4/383 of 30 March, 1950).

Similarly the United Kingdom has suggested a redrafting of Article 9 listing some five exceptions to the right of liberty of a person. The United States has suggested that such an attempt to list detailed exceptions turns the Covenant into a document of limitations rather than a document of freedoms, and that

here again the list of five is by no means exhaustive. The United States favours the retention of Article 9 of the draft as in document E/1371, which you have before you. (See document E/CN.4/401 of 3 April, 1950.)

The article on freedom of information represents perhaps the greatest difficulty over limitations. If you will look at pages 22 to 24 of document E/1371, you will note a list of some twenty-five possible additional limitations which have been proposed. At the present session of the Commission, there seems to be a disposition to avoid any such detailed limitations and to provide only a general clause allowing restrictions necessary "for the protection of national security, public order, safety, health or morals, or of the rights reputations or freedoms of others". At meetings last week, efforts were made by representatives of some countries to include in the article on freedom of information safeguards against threats of war and propaganda for aggression and a clause against the spreading of deliberately false and distorted reports which undermine friendly relations between peoples and states. It was pointed out by many delegates that such clauses could lead to censorship of the press.

Hon. Mr. DAVID: Before you proceed with the federal state clause would you clear up a point for me? I understand that you are asking for freedom of information and the right of correction. That means that if any newspaper or any review is incorrect you have the right to correct it. But supposing the correction is refused, what is the sanction?

Mr. MAYRAND: According to the convention which was accepted a year ago, which has not yet been opened for signature but was passed at the United Nations, you send the communique of correction and the individual who receives the communique is bound to send it to the various press agencies, but there is no obligation for the newspapers to publish it. We were in favour of this system ourselves at Lake Success because otherwise it might give rise to a great deal of propaganda. Articles would be sent from several countries and we would be forced to publish them. It would be publishing their views, and because of the views of certain countries this would certainly lead to great abuses.

Hon. Mr. DAVID: So that the right you are asking for correction may be affirmed, but when it comes to applying it there is no remedy if the one who is asked to make the correction does not do so. Is that correct?

Mr. MAYRAND: Yes, although there is already something in the fact that the government of the country where the false report has appeared is bound to circulate the correction.

Hon. Mr. DAVID: Do you think you could get a correction from the Kremlin right now? Suppose an incorrect statement appears in the *Parvda*, do you believe that because any nation asks for a correction that a correction would be made?

Mr. MAYRAND: Unless the correction pleased them it certainly would not be published.

Hon. Mr. DAVID: Then, there is no remedy.

Mr. MAYRAND: No absolute remedy.

Hon. Mr. DAVID: You say "No absolute remedy". Is there any remedy at all? Let us say you are taking for granted that there is good faith in the world, and that a newspaper or a person or a country is guilty of an incorrect statement—do you expect that that good faith will intervene to make the guilty party correct the statements? You are depending a little too much on human character.

Mr. MAYRAND: We agree that it is not sufficient but we feel that we should try to do this. I might mention that the French government is the only one which has an article binding the newspapers to publish corrections. It is a statutory obligation in France, and that is why the French delegation at Lake Success made this proposal for the right of correction.

The CHAIRMAN: Is that not restricted to libel of individuals?

Mr. MAYRAND: I do not understand your question, I am sorry.

The CHAIRMAN: Is not the French provision restricted to the correction of libels of individuals?

Mr. MAYRAND: I do not know the text of their law.

Hon. Mr. DAVID: It is to avoid libel suit. Let us suppose that you publish something in your newspaper which I believe is a libel. I can send you a document and you are forced to publish it in the same place where the libel was published.

Mr. MAYRAND: Exactly.

The CHAIRMAN: There is the same provision in our common law. The penalty is very much greater if you refuse to publish the correction when requested, and you are later found to be guilty of libel. We have not that same provision in our law.

Mr. MAYRAND: I must say that I have not read the French statute. I have an idea that it goes further than that.

Hon. Mr. DOONE: Our law does not compel a person to publish a retraction. It just means that you will pay more damages if you are subsequently found guilty of libel.

Mr. MAYRAND: I now pass on to the question of the federal state clause.

On pages 25 and 26 of document E/1371, there are three alternative texts for what is frequently called the federal clause. No decision had been taken by the Commission on Human Rights on this clause before its current session. The purpose of such a clause is to provide that a federal state shall on becoming a party to the Covenant be bound immediately to carry out only the obligations which are within the federal field of jurisdiction as distinct from matters within the provincial, state or cantonal fields of legislative competence.

Hon. Mr. DAVID: Right you are that there are provincial rights that should not be encroached upon, but am I to understand that this Declaration of Rights and Freedoms is nothing more than the expression of a desire and a wish, because even if it becomes law and forms part of our constitution it bears no sanction. Therefore, it would not be for the federal government to apply it, but it would apply to all the provinces without any action coming from it. Supposing you declare, for instance, that everyone is entitled to own property. I should like to know in what way this could encroach on provincial rights of property? It is really an expression of a wish, of a hope.

The CHAIRMAN: Is it not an expression of an opinion rather than a wish?

Hon. Mr. DAVID: Well, it goes further than that. I think it is more than expressing an opinion. I think we really hope that anyone who is able to own property will own it. Do you not think so?

The CHAIRMAN: Yes.

Mr. MAYRAND: In defining these rights we shall have to use language different from the language used in the Declaration, which was a mere model. At this time, as it is going to be a binding instrument, we shall have to use more definite language, and that is why it will be extremely difficult and complicated.

Hon. Mr. DAVID: You do not mind if I take a little time on this point because it will settle a lot of difficulties.

The CHAIRMAN: This is the point that is bothering us all, and particularly the lawyers.

Hon. Mr. DAVID: If we could get over that, everything else would pass. Mr. Mayrand, with the experience that you have gained at the different committees that you have attended, can you say whether it is possible to insert in the articles which could be taken as an encroachment upon provincial rights a limitation of a federal right.

Mr. MAYRAND: The idea of the federal clause is to cover all those cases.

Hon. Mr. DAVID: Does it go as far as that?

Mr. MAYRAND: If we have the federal clause, the federal states will be in a privileged position. The federal states would be bound to carry out the covenant only in so far as it falls within the federal jurisdiction.

Hon. Mr. DAVID: I see there is a reference to "provinces or cantons." It says:

In respect of articles which the federal government regards as appropriate under its constitutional system in all or in part for action by the constituent states, provinces or cantons, the federal government shall bring such provisions with favourable recommendations to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

Mr. MAYRAND: I think, senator, that if you will allow me to complete this paragraph in my brief it will answer a number of the queries which you have in mind just now.

Hon. Mr. DAVID: Very well. Will you please proceed?

Mr. MAYRAND: It will be noted on page 36 that the United States has stressed "the importance of including such an article in the covenant to make it possible for Federal States to adhere to the covenant". The text proposed by the United States appears designed to meet the special requirements of the United States Constitution.

A precedent for a federal clause can be found in the Constitution of the I.L.O. as amended at its conference in Montreal in 1946 in article 19(7), which reads as follows:

7. In the case of a federal state, the following provisions shall apply: (a) In respect of conventions and recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal state shall be the same as those of members which are not federal states. (b) in respect of conventions and recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons rather than for federal action, the federal government shall—

(i) make, in accordance with its constitution and the constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such conventions and recommendations not later than eighteen months from the closing of the session of the conference to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action;

In other words, the federal government has the obligation to transmit the document to the provinces for their attention.

Hon. Mr. DAVID: Mr. Chairman, I should not like you to think I am prejudiced, but in my opinion the French text is much clearer and more precise.

Mr. MAYRAND: The article continues:

(ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal state co-ordinated action to give effect to the provisions of such conventions and recommendations;

(iii) inform the Director General of the International Labour Office of the measures taken in accordance with this article to bring such

conventions and recommendations before the appropriate federal, state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them; etc.

At the General Assembly of the United Nations, last autumn, consideration was given to the inclusion of a federal clause in a draft convention to control the traffic in women. The United States was most desirous of having such a clause incorporated in the convention as the offences against prostitution are largely a matter of state criminal law in the United States. The Legal Committee of the General Assembly voted by a very small margin in favour of the principle of a federal clause, but then proceeded to reject the two texts proposed. The convention was thus adopted by the General Assembly without a federal clause, with the United States abstaining.

There is opposition to the federal clause on the part of a number of unitary states which consider that it is unfair and unreasonable that certain states, because of their internal constitutional structure, should be only partially bound to carry out the obligations of the convention, while non-federal states are fully bound.

It may be observed that at the current session of the commission, Yugoslavia, which is a federal state, suggested the following additional paragraph:

No federal state shall ratify the present covenant unless it has previously ensured the application thereof throughout its territory.

This, if adopted, would seem to defeat the very purpose of a federal clause.

It will be noted that in the I.L.O. Constitution and in the text suggested by the United Kingdom on page 26, there is a provision that federal states should report on the implementation within the provinces of that part of an agreement which falls within provincial jurisdiction.

(c) *Colonial Clause.*

This is dealt with in article 25 of the draft covenant. The problem here is somewhat comparable to the problem of implementation by federal states and has been the subject of much controversy in regard to a number of multi-lateral conventions prepared by the United Nations. Certain countries with overseas dependent territories, for which they are internationally responsible, such as the United Kingdom and France, consider that in signing some of the newer types of social or humanitarian conventions they should not be automatically bound to apply them immediately to all their overseas possessions, as some or all of these have a measure of local legislative autonomy covering the subject-matter of the conventions. There is, for example, a provision in the Genocide Convention that contracting parties *may* by notification extend the application of the convention to all or any of the territories for whose international relations they are responsible. The colonial clause was, on the other hand, deleted by the General Assembly last autumn from the prostitution convention; and for this reason, particularly, the United Kingdom abstained on the vote. There is considerable opposition to the colonial application clause on the part of the Soviet bloc and many Latin American and Middle-East countries. On page 27 of the blue document there are proposals of the Soviet Union and the Philippines, which in effect delete the colonial clause. So that is another problem.

(d) *Economic and Social Rights.*

The Universal Declaration on Human Rights contains in articles 22 to 27 inclusive a series of social, economic and cultural rights including the right to social security, the right to work and the right to education. There has been considerable discussion and argument whether such rights should be incorporated in the covenant and if so whether an attempt to do this should be made at this stage or left until a later date. The Soviet and Australian proposals for such

articles are given on pages 29 and 30 of the blue book. The Soviet Union especially has long contended in various United Nations organs for provisions to guarantee the "right to work". The United Kingdom and the United States are opposed to the inclusion of economic and social rights in the covenant at this stage.

The arguments for including these rights have been summarized as follows in an Australian communication of March 17, 1950:

The stage of development of industrial society. When the attainment of civil rights (freedom from arbitrary arrest, fair trial, freedom of information, association and assembly) pre-occupied people during the 17th and 18th centuries, society, dependent mostly on agriculture and handicrafts, was not subject to the social risks (chiefly large-scale employment, and inability to grow one's own food) which occur in the much more specialized economy of today. Hence it is backward-looking to formulate only civil rights, and in fact they do not provide the rights which mean most now to the common man. It is impossible for the majority of the population to enjoy civil rights unless they also enjoy economic and social rights.

This Australian communication which revised somewhat the proposals contained in E/1371, observed that "the inclusion of these additional social and economic rights might limit the number of likely ratifications of the Covenant and that only those countries would be able to accept the instrument which have advanced social and economic institutions".

Some months ago the United States felt that the inclusion of economic and social rights in the Covenant would seriously prejudice its completion by the Commission on Human Rights at the Session now in progress.

The arguments against the inclusion of such articles may be expressed somewhat as follows. Although it is now widely recognized that human rights cannot in modern industrial communities be considered exclusively in political and civil terms and must also take into account the economic and social conditions of individuals, the newer rights, if they may be referred to in this way, are of a rather different character than the traditional political and civil rights. Civil liberties are essentially safeguards against the abuse of power by Parliaments and Governments. The economic and social rights are essentially matters of detailed social legislation and economic and financial policy on both the national and international scale. Their expression constitutes not statements of the rights of individuals against the State itself, but descriptions of the responsibility of Governments and Parliaments for social welfare and economic prosperity. It is widely recognized that the right to work and the right to social security cannot be much advanced by simply declaring them in a general instrument on human rights.

(e) *Reservations.*

This is a somewhat technical matter on which we need not go into detail.

The CHAIRMAN: On your last statement, that rights cannot be much advanced by a mere declaration, obviously a declaration precedes action, a declaration is necessary in order to get any unanimity of opinion: somebody must take the responsibility of putting it in writing so that the debate may proceed on it.

Mr. MAYRAND: Yes. Of course, this exists already in the Declaration of Human Rights as a model.

The CHAIRMAN: I was thinking of our own situation in Canada.

Mr. MAYRAND: It points to the danger, however, of attempting to draw up a too-perfect document on human rights, which will not be speedily and

widely accepted by States as it will contain provisions which, perhaps because of special constitutional, social or economic circumstances, they are not prepared to carry out the covenant. If reservations are to be allowed, should some statement on the kind of reservations which will be admissible and the effect of such reservations, if made, be included in the Covenant or should this problem be left to be dealt with in accordance with the rules of international law? We are now for example faced with problems over the Soviet reservations on signing the Genocide Convention and the Geneva Red Cross Conventions. In the Australian communication referred to, it was suggested that the proposed economic and social rights might be included in a distinct part of the Covenant, which could be ratified separately from the main part giving the other substantive basic human rights.

(f) *Implementation:*

It seems widely agreed that there must be adequate measures for the implementation of the Covenant, though the Soviet Union is opposed to all the suggested methods of implementation, which it considers a violation of State sovereignty.

There is discussion, however, whether the provisions for implementation should be incorporated in the Covenant or should appear as an annex to the Covenant or in a separate instrument. There is also discussion whether it is necessary and desirable to set up some permanent body or bodies to supervise the carrying out of the Covenant or whether it will be quite sufficient to create *ad hoc* committees or groups to deal with any particular issue of implementation which may arise.

The United Kingdom and the United States have jointly suggested the inclusion of articles in the Covenant providing for the establishment of a Human Rights Committee in the event of a complaint being made under the Covenant by one State against another signatory State.

The CHAIRMAN: Not by individuals against the state?

Mr. MAYRAND: No, just by one state against another state. Such a committee would consist of five members selected from a permanent panel. The committee would be empowered to look into the case on a fact-finding basis and submit a report.

Other suggestions include the establishment of special judicial machinery to deal with legal aspects and the creation of bodies with wider powers of conciliation, enquiry, investigation on the spot and publicity. I think it is Australia's suggestion that goes farthest in the establishment of a real court.

The CHAIRMAN: They might have a court, but what about the sheriff? I am thinking of the police force behind the court.

Mr. MAYRAND: At least they would give legal decisions.

The CHAIRMAN: They do not propose a sheriff?

Mr. MAYRAND: No, certainly not.

Mr. PICK: If I may interrupt, Israel has suggested a fairly ambitious scheme of an attorney general for the human rights of the United Nations, or a high commissioner for that office, who would see that prosecutions were made before some international tribunal to be established. They do not deal with the enforcement or the punishment, but at least it would provide the prosecution. I do not think that idea is getting very far.

The CHAIRMAN: That is decisions without teeth.

Mr. MAYRAND:—

(g) Petitions.

There has been considerable division of opinion whether the machinery of implementation should include the right of petition on the part of individuals, groups of individuals and non-governmental organizations, both national and international, or whether the machinery of implementation should envisage, at this stage at least, only the right of one State to lay a complaint against another signatory State. Under the traditional principles of international law, individuals are not subjects but only objects of international law. There has been some movement, however, in the direction of recognizing the individual as a subject of international law, notably in the constitutions and decisions of the several tribunals on war crimes.

There are also certain precedents for giving the individual the right of petition in an international agreement as for example in the Convention on Upper Silesia between Germany and Poland of 1922.

It is not surprising, of course, that the main national and international non-governmental bodies which have been allowed to present their views on the Covenant to the Commission on Human Rights have favoured the right of petition by individuals and such organizations. Denmark, India and some other countries have favoured the right of petition by individuals, but the United Kingdom and the United States are opposed to it, at least at this stage. If individuals are to be allowed to make petitions under the Covenant, there will clearly have to be some means of deciding whether the petitions are receivable. There will have to be some means of screening complaints in order to eliminate frivolous and vexatious abuses of the right of petition.

Mr. Chairman: I have just set forth some of the principal problems which have arisen in drafting the covenant. Of course, you do not expect me as a civil servant to express firm opinions on controversial issues, the more so because the problems which I have described have so far been considered only on the departmental level and have not yet been submitted to the government. Subject to these reservations, my expert colleague from the legal division, Mr. Alfred Pick, and myself will now be glad to endeavour to answer your further queries.

The CHAIRMAN: I understand that the United Nations have made a declaration, and now the question of a covenant is on the tapis. If the covenant is adopted by the United Nations, and Canada went into the covenant, she would then be obligated to pass legislation along these lines of rights, the individual rights.

Mr. MAYRAND: Before ratifying.

The CHAIRMAN: And you tell me, do you not, that the first discussion in connection with it will probably be in July?

Mr. MAYRAND: In so far as we are concerned, since we were not represented on the Human Rights Commission, we have not taken a direct part in the detailed discussion, but the Human Rights Commission is sitting now, and its new draft will be sent to the Economic and Social Council, which will meet next July in Geneva; and now we are represented on the Social and Economic Council, so if the ECOSOC decides to discuss the draft in detail, we shall be in, although it is possible that ECOSOC will merely refer the text to the next General Assembly, at which again we shall be present, next September.

The CHAIRMAN: So that the earliest possible time when a covenant could be endorsed by the United Nations would be in September next.

Mr. MAYRAND: Yes. Well, September? It may go to December.

Mr. PICK: December, I should think.

The CHAIRMAN: Before it will be passed?

Mr. PICK: Before it will be put to a vote.

Mr. MAYRAND: The Assembly meets in the second or third week of September.

Hon. Mr. DOONE: This document we have here is only in the proposal stage, is it?

Mr. MAYRAND: Quite.

The CHAIRMAN: What do you say, gentlemen, to going on now, or adjourning until 4 o'clock? . . . Mr. Sandwell says he can come at 4 o'clock.

Rev. Dr. NOYES: I cannot come at 4 o'clock, but I will just present this brief; it is very short.

The CHAIRMAN: Dr. Noyes was left out through no malice on our part.

Rev. Dr. NOYES: I appreciate that; but I have to catch a train this afternoon.

The CHAIRMAN: Shall we hear him?

Some Hon. SENATORS: Yes.

The CHAIRMAN: Mr. Pick, do you wish to address the committee?

Mr. PICK: No.

The CHAIRMAN: I want to thank you, Mr. Mayrand. I think I express the opinion of the committee. You have touched some of the real difficulties that face us in this committee, particularly we lawyers, who want to be precise—we are not any more precise than the others, but we wish to be—and to be realistic in the handling of this very difficult matter. We are trying to be practical as well as idealistic, and I think your statement has contributed very materially to the thinking out of the program which we must adopt.

Mr. MAYRAND: Thank you, Mr. Chairman. If it would be of any assistance, I would be glad to have my statement distributed afterwards. What I have given here is an explanation of some points which were in the memorandum which we prepared some days ago, before Mr. King Gordon spoke.

Mr. PICK: This will go into the record.

The CHAIRMAN: It will go into the record and be printed. Come along, Mr. Noyes.

Rev. D. WILLIAM NOYES: Mr. Chairman and senators:

The Committee for the Repeal of the Chinese Immigration Law is happy to have the opportunity of appearing before you. We are glad to see that the Senate has seen fit to appoint a Committee to consider the subject of human rights and fundamental freedoms in Canada and how they may be protected and preserved.

Our Committee represents various groups of non-Chinese and Chinese throughout Canada, and its officers and some of its members appear on the letterhead of our brief.

We are basing our case before you today on Article 13 of the motion passed by the Senate establishing this Committee, and which is also Article 16 of the United Nations Universal Declaration of Human Rights. It reads as follows:

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

In January, 1947, the Chinese people of this country were assured by the Federal Government in a statement made by Prime Minister Mackenzie King, that the effect of the repeal of the Chinese Immigration Act will be "to remove all discrimination against the Chinese on account of race".

While it may well have been the intention of the Government to remove from our immigration laws all discrimination against the Chinese on account

of race, the truth of the matter is that this has not been done. Discrimination against the Chinese on account of race still prevails today in our immigration laws.

Of course, it may be said that the discrimination is not against our Chinese brethren as members of the Chinese race, but because of their membership in the so-called Asiatic race. The distinction, in our humble opinion, is about as important as the difference between tweedledum and tweedledee. Whether we discriminate against the Chinese as Chinese or as Asiatics, the result is the same—we treat them as second-class citizens on account of race.

The case for the repeal of Order in Council P.C. 2115 is on record with the Department of Immigration and Citizenship. Our request must be a fair and reasonable one, otherwise the Standing Committee of the Senate on Immigration and Labour would not have unanimously recommended its repeal in March, 1948. Moreover, it must be fair and reasonable, otherwise so many leading Canadian newspapers would not have come out in editorials in favour of its repeal. Furthermore, it must be fair and reasonable, otherwise we would not have the support of such large and representative Canadian organizations as the United Church of Canada, the Roman Catholic Church in Canada, the Canadian Jewish Congress, the Canadian Congress of Labour, the Council of Women, the Association for Civil Liberties, the Canadian Co-ordinating Committee of Youth Groups, to mention only some. Finally, it must be fair and reasonable, otherwise so many Canadians from all political parties and walks of life would not be so willing to sign the petition for repeal addressed to you which this committee has of late been circulating.

We wish to emphasize that we are not asking the government to put into effect a policy of extensive oriental immigration. Expressed in specific terms, our request is this:

1. Repeal P.C. 2115 and bring everyone in Canada under one immigration law which is free from the present form of racial discrimination. There is surely no reason why we should have one immigration law for the families of Europeans and another for the families of Chinese or East Indians. There is surely no reason why, if my family is of European origin, I should have a preference in bringing them to Canada over a man whose family is of Asiatic origin. They are both human beings, and the love of one's children and wife is not peculiar to the people of any one race.

2. Let the new law provide that the wife and children, regardless of age, of people who are legal residents of Canada, shall be admissible. This would make two changes in the present law. For one, it would recognize that Chinese should have the same rights as any other Canadian resident to bring their children here, regardless of age. This, surely, is no more than proper. A Chinese father has the same feelings and wants his children with him as much as any other man, regardless of whether his children are under or over 18. He does not like to have his family split up so that his children over 18 are 7,000 miles away from the rest of his family any more than you or I would.

The CHAIRMAN: For the sake of accuracy is it not a fact that if a child is born while the Chinese father or mother is a British subject, the child is then admissible to Canada?

Dr. NOYES: I know of a case of a doctor in Toronto who, although he is a British subject, is not admissible under the immigration laws of Canada as a citizen of this country. I do not know the fine points of the game.

Hon. Mr. DOONE: In speaking about discrimination, does this rule not apply to Europeans as well as to Orientals?

Dr. NOYES: Not in regard to this age of eighteen.

Hon. Mr. DOONE: I am afraid it does; at least, it did until very recently.

Dr. NOYES: We are speaking of citizenship.

Hon. Mr. DOONE: I have a case in mind where a man and woman, Norwegians, came to this country and were naturalized. They had several children, some of whom were over eighteen years of age and others who were under eighteen. Those who were under eighteen received their proper status as Canadian citizens along with their father and mother, but those over eighteen had to apply for their citizenship rights on their own account. Of course, that was some years ago and perhaps the new citizenship bill has changed the picture.

Dr. NOYES: Perhaps we are under a false impression but that is the idea we got in our discussions with other people in Canada, and this brief was drawn up by a very careful lawyer, and I have proceeded on the assumption that it is correct.

The CHAIRMAN: I think you are correct with this one provision: that when the Chinese father is a British citizen at the time of the birth of the child, the child is admissible irrespective of his age. The child is really a British subject.

Dr. NOYES: May I point out the fact that owing to another order in council—I have forgotten the number just now—Chinese who became citizens of Canada in the past had to get permission from the authorities in China. That was a most difficult thing to do. That order in council has been repealed and we would not have had this problem had it not been on the books before. Therefore, perhaps this could be made an exception on that account.

Hon. Mr. GLADSTONE: Mr. Chairman, when you speak of a child over or under eighteen, do you mean a single or a married person?

The CHAIRMAN: We do not admit a man if we will not take his wife. We will not separate families. I might say there is a good deal of distinction between Chinese immigration—Eastern immigration—and the other immigration to which reference has been made. There is a great deal of discrimination against the Eastern immigrants and against our own Canadian citizens in the matter of Eastern immigration. As I understand it the orders in council that have been passed in recent years, under which so many people have been bringing relatives to Canada, do not apply to Eastern immigrants. Would you please continue, Dr. Noyes?

Dr. NOYES: This actual case will illustrate our point. Some time ago a Chinese father applied for permission to bring his wife, two sons, aged 14 and 9, and unmarried daughter, aged 20, to Canada. Recently he was advised that while his wife and two sons are admissible, because his daughter is over 18 she must remain in China. A more difficult decision for a father or mother to accept would be hard to find.

The CHAIRMAN: That requires some qualification.

Dr. NOYES: We are thinking of the present distress in China.

The CHAIRMAN: Let us be fair to ourselves too. It is true that the younger children only were admissible under the standing orders which could be administered by the officials of our department, but continuously orders in council are being passed allowing children over the age of eighteen—I think the age limit is nineteen, though—to come into Canada, in order that a family may not be broken up by the separation that would otherwise take place.

Dr. NOYES: I know personally that exceptions of that kind have been made by order in council. However, I am speaking not of the exceptions, but of the general rule.

Hon. Mr. WOOD: What proof would there be that the children whom Chinese wanted to bring in were their own children, unless some contact could be made with the Chinese government?

Dr. NOYES: There is no Chinese government to which you can appeal now, but our Immigration Department has in Hong Kong an office that sifts through every case before an individual is allowed to cross the ocean.

The CHAIRMAN: In China they have no records such as we have, but our officials in that country are exceedingly skilful in finding out information about families. In that country the people for the most part live in small communities and are known among their neighbours, and our officials are capable in the performance of their work.

Dr. NOYES: May I explain that these Chinese residents in Canada do not have many children, because they have been over here in Canada by themselves for a good many years and have only gone back occasionally.

Hon. Mr. BAIRD: In Newfoundland we used to have a head tax of \$500 on Chinese. That was imposed solely because when they were allowed to come in freely they flooded the labour market.

The CHAIRMAN: Dr. Noyes is only advocating the quality of treatment for Canadian residents with families in China, and I personally sympathize with his position.

Hon. Mr. BAIRD: I merely made my statement for purposes of information.

Dr. NOYES: I might say that we are not advocating that the government put into effect a policy of extensive Oriental immigration. We just mention this case to show that sometimes difficulties arise owing to the present distressing circumstances in China.

Our brief then goes on to ask: on what ground, then, can our present law be defended? That the Chinese should not have the same rights as other fathers to bring their children here, regardless of age? We have already told them in the Canadian Citizenship Act and in their citizenship certificates that they are entitled to equal rights. However you look at it, as a matter of justice, religion, humanity, democracy or citizenship, it is no more than right that this change be made.

I might point out that since the year 1924, when the Chinese Immigration Act went into effect, only eight Chinese came into this country as permanent citizens. That figure, obtained from government statistics, shows that the Chinese who are here have been residents for a long time, not just for a few years.

Hon. Mr. DOONE: Mr. Chairman, may I interrupt in order to correct a misstatement that I made? I gathered a wrong impression. The point is that children under a certain age of Europeans who came to Canada became Canadian citizens along with their parents, but any children over that age were required to take out citizenship papers in their own right. However, they were not denied admission to Canada. I wish to make that correction for the record, because I see that I was entirely wrong in what I said before. I was discussing one aspect and the witness was discussing another.

Dr. NOYES: Mr. Chairman, I might point out that if the Immigration Act had allowed the entry of Chinese into Canada from 1924 to the present date, this difficulty over the admission of Chinese children beyond the age of eighteen would not have arisen, because the children concerned would probably have been born in this country instead of in China.

Our brief continues:

3. Finally, we would ask that the law be extended so that, in proper cases, a reasonable number of Chinese who do not fall within the class of wives and children, may be admitted to permanent residence in Canada.

An actual case, for example, that comes to mind, is that of a Chinese doctor who graduated with great distinction in 1943 from the School of Dentistry at McGill University. I may say that he graduated at the head of the class. After completing a fellowship at the Colgate Medical School at Rochester, he applied for landing in Canada and was refused. His father is a minister of the United Church, at Edmonton, Alberta.

Last year, Parliament, recognizing the close link that exists between citizenship and immigration, approved the establishment of a Department of Citizenship and Immigration. As citizens of Canada, the Chinese have been told and assured that under the Canadian Citizenship Act they are entitled to equal rights. But then they look at our immigration laws and ask "What does it all mean when they treat us as second-class citizens?"

We owe it to them to fulfil the promise of equal rights as Canadian citizens. We owe it to ourselves because only by fulfilment of our democratic heritage will we develop staunch and true supporters for our way of life. As Prime Minister Nehru reminded the House of Commons when he addressed it a year ago, "The so-called revolt of Asia is a striving of the legitimate pride of ancient peoples against the arrogance of certain western nations. Racial discrimination is still in evidence in some countries and there is still not enough realization of the importance of Asia in the councils of the world".

I do not think the reference to the arrogance of certain Western nations was intended to apply to Canada.

In the United Nations Universal Declaration of Human Rights, article 1 says: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood".

Laws such as Order in Council P.C. 2115 violate this article as well as article 16 of the Declaration. We cannot hope to win the friendship and spirit of countries like China and India, or win the hearts for Canada of people from those countries living here, by paying mere lip service to such human rights. It is expected of us and we must be prepared to put these human rights into practice.

We therefore ask you to recommend to the Dominion Cabinet that it repeal P.C. 2115 and give effect to these representations, and thus serve notice to the Chinese people in Canada that they are no longer second-class citizens, and to all people that in Canada we practise as well as profess human rights. We look to you in all earnestness for a favourable report that will seek to secure and guarantee through law, human rights for all people in Canada without discrimination as to race or religion.

I wish to thank the committee for giving me permission to hold the members longer than they would have otherwise been held. My only excuse for doing so is that I have to catch an afternoon train for Toronto, and was not able to present the brief yesterday. We wish to thank the Senate for what it is doing in this field, before any action has been taken by the House of Commons. We appreciate that the committee has been kind in its hearing of those people who have come before it.

The CHAIRMAN: We thank you, Dr. Noyes, for appearing before us and giving us your thoughts in the matter.

Hon. Mr. BAIRD: I think we should proceed Mr. Chairman.

Mr. WOOD: We would at least have the information on the record, to be dealt with later. I think we should proceed, provided Mr. Sandwell does not object to speaking before this small committee.

The CHAIRMAN: Mr. Sandwell will realize that this is the machinery for hearing; it is not a grand audience; though small in number, it is great in quality. We have more than our quorum, and the witnesses are speaking largely for the record. Will you go ahead please, Mr. Sandwell.

Mr. B. K. SANDWELL: Mr. Chairman and honourable senators, the Canadian Committee for a bill of rights was formed some two years ago, I believe, when this whole question was very much less advanced than it is at the present; and the original statement of that committee you will find as an appendix to that document which is being circulated among you. The appendix includes a long

list of the names of Canadian citizens, some of them quite distinguished, who signed the original statement. That committee is still in existence. Most of the signers contributed a certain amount of money to carry on the operations. We felt that with the statement we ought to make an appearance before your committee, and try to deal with the same project for a Canadian bill of rights, in the light of developments which have since taken place. With your permission I shall read the brief, which is as follows:

The Canadian Bill of Rights Committee warmly welcomes the appointment of your committee. This brief, presented in the name of the Committee represents the earnest view of a large and growing number of Canadians of all walks of life, occupations, backgrounds, political and religious beliefs—the view that now is the time for Canada to embody in her constitution—or fundamental law—certain basic rights or freedoms which should not be abrogated by any law or statutory rule.

Attached you will find a statement in support of a constitutional Bill of Rights which this committee sponsored some time ago, and the names of many prominent and representative Canadians who signed the statement.

There are some three or four main reasons why we believe that action on a Bill of Rights for Canada would be timely now. First the conscience of the world has spoken in the Universal Declaration of Human Rights. The Member States of the United Nations have pledged themselves to promote respect for these human rights which are the foundation of freedom, justice and peace in the world, and for whose disregard and contempt this generation of men have seen unparalleled barbarities even in so-called civilized countries. Canada should take action to give substance to her acceptance of this Universal declaration.

Next, Canada has reached a stage in her own history at which she is taking control over her own fundamental law, first, by accepting responsibility for the right to amend, and so in effect to make or remake her constitution, secondly, by providing that a Canadian Court shall be her final Court of Appeal, and shall have the last judicial word in interpreting the rule of law which is the protection for human freedoms.

At this time it would be well to make explicit those basic conceptions of freedom of speech and religion, of assembly, of the person which are already implicit in the written constitution, namely the British North America Act, which provides for parliamentary government which cannot exist for long as a reality without these freedoms.

And lastly in the inevitable encroachment of governments in the complex modern world there is all too frequent evidence in Canada as elsewhere that basic rights and freedoms are subject to real threats.

Under the War Measures Act, orders in council were passed for the deportation of many thousands of Japanese Canadian citizens without any suggestions of offence on their part. The Padlock Act of Quebec gives the Attorney-General of that province the right to padlock premises which he deems likely to be used for the propagation of some vague undefined communism. Religious prosecution of minorities is aided by the banning of the distribution of pamphlets except under public license. The Legislature of Alberta sought (in the Free & Accurate News Information Act) to license the press. The Legislature of Prince Edward Island passed a trade union act which in effect forbade workers in that province to belong to associations or trade unions with membership outside the province. These and many other instances show that, perhaps unconsciously, even in Canada, governments and legislatures from time to time tend to encroach on basic human rights.

We propose that to safeguard these rights a Bill of Rights be incorporated in the British North America Act. The necessity for such a constitutional protection is that far greater solemnity attaches to a constitutional provision which is part of the basic or fundamental law than to incorporation in the statute law of which new volumes are added yearly and which can be repealed or abrogated

at any time. A constitutional provision recognizes the basic compact on which federation as a whole rests. It can only be changed by solemn act. Nor can it be forgotten that it is against hasty, ill-considered legislation overlooking some fundamental principle of freedom that protection is needed.

There are those who do not believe that there is any real need for a Canadian Bill of Rights. They refer to the fact that in England freedom has flourished without a written constitutional protection and has been based on the traditions and outlook of her Parliament, Courts and people. The position in Canada is not the same. To begin with Canada has a written constitution which already contains protection of certain rights of language and education. Canada has one Parliament and ten legislatures, Britain only one Parliament. Britain has a compact homogeneous population in which throughout the centuries, freedoms have gradually broadened out from precedent to precedent. Canada has a scattered population of many different origins and backgrounds, some from countries where liberties are unknown.

Sometimes it is pointed out that in the United States even with its constitutional Bill of Rights it has not been found possible to prevent interferences with civil liberties. This is of course, true. But it would be wrong to overlook the tremendous influence of the Supreme Court of the United States whose interpretations have had an educative influence and afforded a very real protection legally to civil and minority rights.

Nor can it be claimed that such a Bill of Rights would infringe on Provincial rights. For Canada's highest Court has made it clear that there is no provincial right to abridge the basic freedoms and civil rights of Canadian citizens inherent in the parliamentary form of government.

Another common objection to a Bill of Rights is that the freedoms it confers may be abused and that the world conflict of ideas between militant communism and democracy make it too dangerous to afford even a limited protection to the distribution of subversive ideas. Of course freedom may be abused. And there are appropriate limits which the Courts have always recognized in the interests of the community. The right of free speech and association is not absolute. Nevertheless the free world to win its battle for the minds of men all over the world must not abandon those very institutions of freedom that make its way of life distinctive, worth living for and worth fighting for. Freedom from fear and from arbitrary arrest and detention, the right to associate with like minded people for any lawful purpose, the right to criticize governments and institutions, to seek peaceful change, these are the priceless heritage that we must protect now from hysteria or indifference.

Thousands of young Canadians are growing up for whom a clear declaration in Canada's own constitution of basic freedoms would constitute a source of education and inspiration. We must understand and cherish those things which distinguish us from the world of repression and fear, all too familiar behind the iron curtain. To this end a Bill of Rights would constitute a valuable aid. Around such a bill a greater understanding and a more vital democracy would grow.

We respectfully urge that your committee would be doing a work of great historical significance for the future of Canadians of all racial backgrounds if it were to report that now is the time for a Bill of Rights. Generations of free Canadians would look back and say that when Canada first assumed complete control over her own destiny her first act was to affirm as the basic principle of her federation and association as a nation, the human rights and freedoms to which humanity everywhere aspires and without which men cannot be truly men.

Respectfully submitted,

CANADIAN COMMITTEE FOR A BILL OF RIGHTS

Per: B. K. SANDWELL,

F. A. BREWIN, K.C.

APPENDIX

STATEMENT

Canadians are vitally interested in the enactment of a Bill of Rights as part of the Constitution of Canada. As evidence of this fact, we offer this statement in support of a Bill of Rights which was subscribed to by the individuals whose names appear after it:

The protection of the liberties of the subject has from time immemorial been the historic responsibility of Parliament.

The constitution of Canada, of which the B.N.A. Act is the principal written part, is a constitution "similar in principle to that of the United Kingdom", and embraces by implication but nowhere expressly sets forth in binding and written form such fundamental freedoms as freedom of speech, religion, assembly, press and association, nor does it afford protection for the individual against arbitrary arrest, seizure and excessive bail, and other like civil liberties and human rights.

Recent events in Canada and throughout the world have demonstrated that it is desirable that such rights be stated with the utmost clarity in the written Constitution of Canada, namely, in the B.N.A. Act, in order that all men and women in Canada shall know them and shall feel that their rights are secure from interference by legislative or administrative action, through the protection of the Courts.

We therefore urge that the Parliament of Canada should by resolution seek an amendment to the B.N.A. Act, restraining the Parliament of Canada and provincial Legislatures from making or enforcing any laws abrogating the aforementioned liberties and, in particular, any laws interfering with freedom of religion, freedom of speech and expression, freedom of the press, freedom of assembly, freedom of association and organization, protection against excessive bail, protection of minorities, protection against cruel and unusual punishment and protection against arbitrary and abusive deprivation of life, liberty or property, and providing against the exile of Canadian citizens, establishing the above rights and the right to the franchise, to habeas corpus, to a fair trial with the assistance of counsel, all without discrimination as to race, sex, language or religion.

Parliament has recently approved the Charter of the United Nations which declares it to be amongst the purposes of the United Nations to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

It would be particularly timely when recent events have left in the minds of our people a vivid sense of the dangers of totalitarianism and the repression of civil liberties, and when the Parliament of Canada has recently defined Canadian citizenship, that a solemn and explicit declaration of these fundamental freedoms hitherto implicit in our traditions, now should be enacted as part of our Constitution. These rights would be in addition to, and in no way in derogation from existing minority rights already set forth in the B.N.A. Act.

We urge that the members of Parliament of all parties should seize this opportunity to establish a Bill of Rights for all Canadians.

SIGNATORIES

Vancouver, B.C.: Earle Birney; Dr. Norman Black; Kenneth Drury; Hugh Dobson; John Goss; Dr. A. E. Grauer; Lawren Harris; Adolph Koldofsky; Leon Ladner, K.C.; Hunter Lewis; R. J. McMaster; Dr. Norman McKenzie; Elmore Philpott; Dorothy Steeves; Watson Thomson.

Victoria, B. C.: Dr. J. M. Ewing; Rev. A. E. Whitehouse.

New Westminster, B.C.: Dorothy Livesay.

Edmonton, Alberta: L. Y. Cairns, K.C.; C. H. Huestis; George Hunter; Elmer Roper, M.P.P.; Carl J Stimpfle; R. H. Settle; F. G. Winspear.

Calgary, Alberta: Alex Calhoun; Gladstone Virtue, K.C.

Saskatoon, Sask., F. T. Appleby; Dean F. C. Cronkite.

Regina, Sask.: The Hon. J. W. Corman, K.C.; Mrs. Margaret Cooper; The Hon. T. C. Douglas; Rev. J. P. C. Fraser; Rev. Homer Lane; Dr. H. C. Newlands; Rev. L. M. Outerbridge; C. G. Palmer; A. B. Ross.

Winnipeg, Man.: Grant Dexter; Samuel Freedman, K.C.; Eileen Garland; Joseph Harris; E. J. McMurray, K.C.; David Owen; Victor Sifton; Dr. Carleton W. Stanley; Dr. A. W. Trueman; Dean D. S. Woods; W. J. Waines.

Ottawa, Ontario: Mrs. John Bird; Patrick Conroy, Phineas Cote, M. P.; R. E. G. Davis; Maurice Fyfe; Major J. C. G. Herwig; J. M. Macdonnell, M.P.; A. B. MacDonald; A. R. Mosher; Senator Arthur Roebuck; Alistair Stewart, M.P.

Toronto, Ontario: Dr. Gordon Agnew; Gerston Allen; C. A. Ashley; Andrew Brewin; Dr. Peter Bryce; Karel Buzak; George Bagwell; John Coulter; Dr. E. A. Corbett; Murray Cotterill; Jack Cooke; Dr. Harry Cassidy; Capt. R. G. Cavell; Dr. W. A. Cameron; Dr. John Coburn; Ethel Chapman; Warren Cook; William Arthur Deacon; Rev. Gordon Domm; Rev. J. T. Dawson; Oakley Dalglish; Rabbi A. L. Feinberg; Mrs. Kaspar Fraser; Rev. J. M. Finlay; Anne Fromer; Prof. J. Finkelman; Edith Fowke; Mrs. W. L. Grant; G. M. A. Grube; Margaret Gould; Lorne Green; Marvin Gelber; Saul Grand; Leonard Harman; Andrew Hebb; Irving Himel; Prof. Charles E. Hendrie; Emmanuel Hahn; Prof. Leopold Infeld; Dr. Harold Innes; Canon W. W. Judd; Rev. Wm. Jenkins; Emma Kaufman; Prof. J. D. Ketchum; Dr. C. C. Lingard; George McCullagh; Sir Ernest MacMillan; C. H. Millard; Elliot L. Marrus; G. H. Maitland; J. S. Midanik; Dr. S. K. Ngai; Dr. Charles E. Phillips; Dr. Lorne Pierce; Dr. E. J. Pratt; A. F. W. Plumptre; Dr. Stanley Russell; Ben Rose; Dr. A. Rose; Ralph Staples; Dr. Sidney Smith; Provost R. S. K. Seele; B. K. Sandwell; Mrs. Margaret Spalding; Rev. J. Lavell Smith; George Tatham; Rev. E. H. Toye; Mrs. P. Tanner; Bessie Touzel; E. B. Titus; William M. Teresio; Herman Voaden; David Vanek; Dr. Malcolm Wallace; Jack Wainberg; Drummond Wren; Leon Weinstein; Prof. H. Wastaneys; Isabel Wilson.

Windsor, Ontario: George Burt; Mayor Arthur J. Reaume.

Kingston, Ontario: Lt. Col. Eric Harrison; A. R. M. Lower; Gregory Vlastos.

Hamilton, Ontario: Mayor Sam Lawrence.

Montreal, Quebec: Dean W. H. Brittain; Rev. Angus Cameron; Madame Therese Casgrain; C. C. Papineau-Couture, K. C.; Gerald Cragg; Rev. Claude deMestral; George V. Ferguson; Gwethalyn Graham; Madame Constance Garneau; Paul LaFontaine; Arthur Lismer; Dr. J. C. Meakins; John McConnell; Hugh MacLennan; Roger Ouimen; Dr. Wilder Penfield; Leslie Roberts; F. R. Scott; Dr. Baruch Silverman; Dr. D. L. Thompson; Frederick B. Taylor; Gordon Webber; Mme. Pauline Donalda.

Shawinigan Falls, Quebec: Dr. C. N. Crutchfield.

Fredericton, N. B.; The Hon. C. H. Blakeny; Dr. Fletcher Peacock; Dr. F. J. Toole.

Halifax, N.S.: Dr. H. B. Atlee; Donald Crowdis; Dr. L. J. Donaldson; C. F. Fraser; F. G. Gilkie; Rev. J. W. A. Nicholson; L. Richter; Lloyd Shaw; George A. Smith; L. E. Shaw; George Wilson.

Glace Bay, N.S.: Freeman Jenkins.

Kentville, N.S.: Robert Leslie.

Antigonish, N.S.: Alex MacIntyre.

The CHAIRMAN: Wonderful. A beautiful statement.

Dr. SANDWELL: I have very little I want to add to that, Mr. Chairman. We are accustomed to running up against the argument that Canadians interested in these rights and freedoms can safely rely on their representatives in Parliament; and we are not altogether satisfied with it. We feel, while we are very open-minded as to exactly what rights and freedoms should be preserved in such a document as this bill of rights, and that the matter should have very, very careful consideration, but when these rights are finally decided upon, Canadians would be much safer, if they had a constitutional document which can only be changed by what this brief describes as "a solemn act", that is to say, by whatever procedure is eventually arrived at for changing the constitution of Canada, than if they are still subject to the perhaps occasionally emotional disturbances of governments, not merely the Government of Canada but the government of any province. I have Mr. Brewin with me, and he is a lawyer.

The CHAIRMAN: Would you rather go on now, while the amendment of the constitution is in the hands of a parliament which is not Canadian, or await the time when the ability to change our fundamental constitutional laws is in our own hands?

Dr. SANDWELL: Well, Mr. Chairman, that condition has completely changed, of course, in the two years since this committee originally began its work. At that time, I suppose, we did think it would be necessary to ask Westminster for what we wanted. But now that we have got so far as we have about taking over our own constitution, would anybody think of going to Westminster for this? Would it not in the natural course of events be deferred until our constitutional procedure is worked out? However, I do not want to commit the committee on that, because the committee wants a bill of rights, and if it looks as though there is to be no possibility of getting it in Canada for another ten years I suppose we should be quite willing to go to Westminster.

The CHAIRMAN: Of course, if your bill of rights affects provincial jurisdiction, is intended to do so, then of course you must get it done at Westminster. If it is within the Dominion jurisdiction, then I think we have the right, have we not, to amend our own constitution, under recent legislation?

Hon. Mr. PETTEN: Yes.

Dr. SANDWELL: I am assuming there will be shortly devised a means whereby we can amend our own constitution without going to Westminster.

The CHAIRMAN: I was wondering whether you would think it wise to proceed immediately with such rights as we possess, or whether it would be wise to wait until we have a larger right in this matter within our own borders.

Dr. SANDWELL: You mean, sir, to deal only with those rights which can be dealt with by the Dominion Parliament?

The CHAIRMAN: Yes.

Dr. SANDWELL: I think I am safe in saying that this committee desires very deeply to deal with rights which are in the control of the provincial legislatures as well as those of the Dominion.

The CHAIRMAN: Well, to do that we would have to wait until that power came into our hands in some way, whatever the arrangements might be; and if we proceed now with a bill of rights or with an amendment to the constitution it must be confined to those things within our own jurisdiction as a dominion.

Dr. SANDWELL: Quite. But your committee, Mr. Chairman, is free surely to make suggestions looking to the utilization of a future amending power in Canada.

The CHAIRMAN: So long as we do not embarrass those trying to get that power—

Dr. SANDWELL: True.

The CHAIRMAN: —by proposing things which may be controversial, and add to their difficulties. That is our problem, or one of our many problems. Well, now, is that all, Mr. Sandwell?

Dr. SANDWELL: That is all, sir. I would be very glad, if any members of the committee have any other questions, to try to answer them.

Hon. Mr. PETTEN: Just this occurs to me, Mr. Chairman: that, life being as uncertain as it is, would it not be better for us to do what we can, now, within the limits of the federal jurisdiction,—get something done, shall we say? Then from that we can go on in later years. It may take I don't know how many years.

The CHAIRMAN: No one knows.

Hon. Mr. PETTEN: I do not think it will be done very quickly. This thing may hang fire indefinitely. We may disappear. And we, I think, are anxious to get something done.

Hon. Mr. DOONE: Our greatest trouble at the present time as regards getting anything done at all is the fear of what is described here as “militant communism”.

The CHAIRMAN: Do not forget that our greatest weapon against militant communism is our freedom.

Hon. Mr. DOONE: Of course it is.

The CHAIRMAN: And do not forget the experience through which we have passed twice, where the loosely governed democracies overcame the rigidly organized totalitarian states that were supposed to be so efficient as compared with our loose and slow indefinite methods. But we won, and we won because we stayed with freedom. Is there any other question for Mr. Sandwell?

Hon. Mr. DOONE: There is one question I would like to ask Mr. Sandwell. Do you not think there should be some modification in the matter of security in the time of war?

Dr. SANDWELL: I should be quite prepared, sir, to see in any Bill of Rights certain reservations covering time of war; most decidedly so.

Hon. Mr. BAIRD: Would not the War Measures Act take care of all these rights and privileges, and so on?

Hon. Mr. DOONE: Yes, but it is objected to here.

Hon. Mr. BAIRD: If the Bill of Rights becomes a constitutional document it will override the War Measures Act.

Hon. Mr. DOONE: That is it.

Mr. BREWIN: I wonder if I might answer that point from the experience of the United States? The courts in the United States have always interpreted some action that was required by war or emergency as being within the constitutional framework. In other words, the effect of a Bill of Rights is not to say that there are some literal prescriptions that always apply, but to give the rights to the courts to deal with them. Let me give you an illustration of where that might apply in Canada. Under the War Measures Act there were certain pro-

ceedings for the removal of the Japanese Canadians from the coast. This clearly interfered with normal human and property rights. I have no doubt that had the court considered those matters it would have said that they were related to the dangers of war, and would have said they were perfectly all right. On the other hand, you had in the post-war period certain other restrictions which the courts might well have said were carried too far under the guise of emergency. So that in a Bill of Rights and the restrictions on the part of legislators under the Bill of Rights, wording is always interposed to give sense and judgment to the courts. It has always been felt that the United States was never hindered in the successful prosecution of war because they had a Bill of Rights. On the other hand, the citizens of that country have had an instrument by which they have been able to prevent a vague general provision, such as the War Measures Act, from being carried over to a post-war period to justify something that had very little relation to it. So, for that reason, we feel we can safely rely on the courts to see that these rights are properly administered. These rights are, of course, never absolute. For instance, freedom of speech is never absolute and when there is treasonable or seditious talk the courts rule accordingly. On the other hand, our courts would be able to apply the same sort of rule as does the Supreme Court of the United States; namely, to see that these restrictions are justified by some clear and present danger. Therefore, we do not feel that the danger you speak of would be serious because the courts always interpret these things in relation to the situation.

The CHAIRMAN: You would have to have it in your bill.

Mr. BREWIN: They have not got it in the American Constitutional Bills of Rights. The courts have said that these general provisions restraining Congress from abridging freedom of speech must all be in relation to the overriding necessity for preserving the safety of the state. In the Civil War or any other war the governments of the United States were never prevented from taking effective executive action.

The CHAIRMAN: In censorship matters and otherwise.

Mr. BREWIN: That is right.

Hon. Mr. DOONE: The only trouble I can see is that in the case of emergency the courts would be so slow in acting that the emergency would be over before a decision was made.

Mr. BREWIN: There would still be some measure of protection. It is better than having nothing at all. Perhaps in time of war you cannot expect them to intervene, but in normal times—

Hon. Mr. DOONE: Yes, I think you are all right as to normal times, but I am referring to a state of emergency.

Mr. BREWIN: Generally speaking, even in wartime there remains the necessity for seeing that you do not destroy altogether the right to appeal to the courts. I think the right of appeal should be there. We did not come here desiring to suggest in detailed form what we think should be contained in a constitutional Bill of Rights, but for the information of the committee, in this earlier brief that is in a blue cover and which we submitted to a Special Joint Committee of the Senate and House of Commons in 1948, at pages 18 and 19 is set out a very rough tentative suggestion of what we mean by a constitutional Bill of Rights. I refer the committee to this, not because I want the committee members to go into it in detail, but by way of illustrating the sort of thing we have in mind. We would like to suggest that it is important to get down from the realm of general declaration that is in the United Nations Declaration, to something specific. I think the previous witness from the Department of External Affairs pointed out that many of the things in the nature of economic and social rights are not appropriate for inclusion in a constitution. There is no machinery and no method

by which they can be enforced. They may be very useful as a declaration of aims, but in contemplating a constitutional Bill of Rights one should strictly limit oneself to what might be called civil rights. I refer to things which are already explicit in our set-up. For example, freedom of the press, freedom of speech and freedom of association. Those things are already by implication in our constitution. We already have some very fine judicial declarations. Chief Justice Duff in the *Alberta Free and Accurate Information* case gave a very fine declaration that was inherent in the British North America Act and parliamentary institutions—the right of a free press.

The CHAIRMAN: Do you know the reference?

Mr. BREWIN: It is in the 1938 Supreme Court reports. I cannot give you the page number. There was also a judgment in that same case by Mr. Justice Cannon of the Supreme Court. Recently there was a case in the Supreme Court of Canada, *Rex. v. Boucher*, which concerned some man charged with sedition. I think that is reported in the most recent volume of the Canadian Criminal Cases. Again I am sorry that I have not got the reference. There you will find in the judgment of Mr. Justice Rand, a very fine declaration of the inherent principles of freedom that are already implicit. Those are the things which could, without infringing on any civil law or anything of that sort, be reasonably incorporated in a constitutional Bill of Rights. We see two great values in that. The one that I would put first is the educational value. We are saying that these things are part and parcel of the whole compact of confederation, and no doubt you have heard a good deal of this before, but someone made a remark about the effect of communism. When I first graduated in law I went with Chief Justice McRuer and investigated the activities of communists in Toronto. It was just a small communist group but a few years later it became larger, and finally Mr. Tim Buck and his friends were put in prison. When they came out they were welcomed by huge throngs. What made this section of the public roar at that time was not just the publicity they got through repression and sentences, and so on, but more than anything else, it was the fact that during the depression many people felt that those people had something to offer.

Hon. Mr. Wood: And that they had nothing to lose.

Mr. BREWIN: That is right. And it is our conviction that a constitutional Bill of Rights would be a very effective weapon against communism.

Hon. Mr. Doone: For propaganda purposes?

Mr. BREWIN: Yes. In the minds of people brought up in other countries, and even in the minds of many Canadians, how are you to distinguish between a free world and a communist world unless you bring it to the forefront of their attention that these rights are the very basis of our system? We do think that these rights should be explicitly set out.

On the point of some of the matters that were discussed, we appreciate that the method of amending the British North America Act is still under discussion, and that it is a knotty problem that may not be solved very quickly, since all the provinces are concerned with it. But we should like to suggest that even now, whatever the present limitations may be, it would be worthwhile for this committee to say that at the same time as the problem of how to amend the constitution within Canada is being considered, these human rights and fundamental freedoms that are the basis of our system should be dealt with and stated in explicit form. The illustrations that we have mentioned here are of cases where there has been some infringement. Perhaps not one of them is very serious, and there may be an explanation for them all, but they show how easy it is, under the exigencies of the times,

for legislatures and governments to step in and restrict personal liberties. We feel that the time is ripe for the passing of a Bill of Rights, and we are convinced that this would be a great help in developing democracy in Canada.

The CHAIRMAN: Thank you, Mr. Brewin.

Hon. Mr. DOONE: I should like to compliment the witnesses upon the splendid manner in which they have presented their brief.

The CHAIRMAN: I agree with you, Senator Doone. We do not pass resolutions of thanks to witnesses in the committee, otherwise this would certainly be one of the briefs that would warrant a vote of thanks. During our sittings we have had some very informative, helpful and excellent presentations, and I think we all have been impressed by the very wide interest that this subject has provoked among good people throughout Canada.

Our agenda for this morning has on it the name of Mr. Kaplanski, representing the Jewish Labour Committee, but he is not present. Because of the shortage of time available to us, I wrote him asking if, instead of making an oral presentation, he would send in his brief to us, and apparently that is what he has done.

Our next meeting will be on Tuesday of next week, and it may be that we shall conclude our public hearings that day, but if this should not be possible we shall require to have a short sitting on Wednesday. Then will follow our real difficulty, in the drafting of our report.

Once again I wish to thank the senators who have been so faithful in their attendance.

At 12.10 p.m., the committee adjourned until Tuesday, May 9, 1950, at 10.30 a.m.

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PROCEEDINGS
OF THE
SPECIAL COMMITTEE
ON
HUMAN RIGHTS
AND
FUNDAMENTAL FREEDOMS

No. 7

TUESDAY, MAY 9, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

WITNESSES:

- Mr. Morris Biderman, United Jewish People's Order.
- Mr. Edmond Major, Civil Liberties Union, Montreal.
- Ven. Archdeacon C. G. Hepburn, Executive Committee of the Department of Christian Social Service of the Church of England in Canada.
- Mr. Lyle Talbot, Windsor Council on Group Relations.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF REFERENCE

(Extract from the Minutes of Proceedings of the Senate
20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the Province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

Attest.

L. C. MOYER,

Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, 9th May, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators: Roebuck, *Chairman*; Petten, Reid, Doone, Gouin, Ross, Kinley, David, Grant, Gladstone, Wood, Davis, 12.

The official reporters of the Senate were in attendance.

Messrs. Morris Biderman and Abraham Feiner and party, of the United Jewish People's Order, Mr. Lyle Talbot, of the Windsor Council on Group Relations, Messrs. Edmond Major, Jean Pare, Henri Larocque and G. McCutcheon of the Civil Liberties Union, Montreal, and Ven. C. G. Hepburn and Rev. H. C. Vaughan of the Executive Committee of the Department of Christian Social Service of the Church of England in Canada, were present.

Mr. Biderman, Mr. Talbot, Mr. Major and Ven. C. G. Hepburn read briefs, and, with Mr. Feiner and Mr. McCutcheon, were questioned by Members of the Committee.

At 1:10 p.m. the Committee adjourned until Wednesday, May 10, 1950, at 10.30 a.m.

Attest

J. H. JOHNSTONE,

Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, May 9, 1950.

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. Roebuck in the Chair.

The CHAIRMAN: Now, as representative of the United Jewish People's Order, Mr. Biderman, and there are, I fancy, some others with you, would you come forward with whoever is with you? We have no formalities in this committee, Mr. Biderman. You can stand up or sit down. We are glad to see you here with so many good supporters, and the committee will be glad to hear what you have to tell us.

Mr. MORRIS BIDERMAN: I think I should, with the permission of the Chairman, introduce the delegation. Beginning with Mr. Al Blugerman, Youth Director, Toronto; then, Beryl Silverberg, secretary of the Montreal Order; Mr. Abe Feiner, legal attorney; Dr. Rose Bronstein, active in the Women's Division, Toronto; Mr. Sholem Shtern, Principal, Morris Winchevsky Schools, Montreal; Mr. Max Burstyn, Manager, Toronto Jewish Folk Choir; Mr. Abe Berger, Vice-President of the Montreal organization; Mr. James Garfinkle, Vice-President of the Toronto Order; and I am the National Secretary of the United Jewish People's Order.

The CHAIRMAN: Can you tell us a little more about the Order,—what it is?

Mr. BIDERMAN: I think that story will be told in the brief.

Honourable Members of the Senate:

On behalf of the National Executive Board of the United Jewish People's Order we wish to thank the Committee for this opportunity to appear before you and to present the statement which follows. It is heartening indeed, in these days of tension, when civil liberty must be defended and maintained in the face of hysteria and mounting tendencies to bigotry, that members of the Senate should bring their wisdom and statesmanship to bear upon these problems, and provide a forum for the defence of those principles upon which our national welfare and the individual happiness of every Canadian rests.

We are here as members of a minority, and as the representatives of one organization concerned for the welfare of that minority and of the entire nation. It is as proud Canadians that we recall the role of our country in years past, when Canada was among the first nations to grant equal rights to her Jewish citizens... when Canada, as in the time of Sir Wilfrid Laurier, spoke out against the oppressions which Czarist Russia inflicted upon the Jews of the Ukraine—when Canada threw her weight into the struggle against the inhuman perversities of Hitlerism. And as proud Canadians who would prevent our country from slipping into the neglect of her finest tradition of tolerance and the respect for the rights of minorities, we appear before you today, in order to lay before you the facts of recent occurrence which must cause concern among all men of good will in our land.

On Friday, January 27th, 1950, the Provincial Police of Quebec, on order of the Premier and Attorney-General of that Province, and with the help of

officers of the Montreal city police and of a representative of the Sheriff of Montreal, descended upon the quarters of the Jewish Cultural Centre at 5101 Esplanade Avenue in Montreal, and there carried out a raid of many hours' duration.

After having ransacked the premises and removed from them several truck-loads of documents, files, books, personal and official papers, the police affixed a padlock and seal upon the doors of the Centre and, under the provisions of the so-called "Padlock" Law, barred the premises against use for a period of one year.

Under "Exhibit A", attached hereto, the Committee will find a detailed list of items which the police authorities took away, as they said, "for examination". This list is in the form of a receipt, signed by the senior officer of the raiding party, and it may be noted that among the items which are there detailed, may be found such diverse things as a copy of a calendar and a volume of Tolstoi.

You will find no argument there that in any way may be considered illegal in our country.

Simultaneously with the raid on the Jewish Cultural Centre, the police groups above mentioned carried out yet another raid upon the premises of the Winchevsky Jewish School, a parochial academy which, in addition to the standard curriculum of the Montreal Protestant School Board, teaches the Yiddish and Hebrew languages, as well as Jewish history. The raid upon the School (which has been in existence for more than twenty years) was carried out during an hour when the classes of young children were in session, and the police, assuming command of the situation, took it upon themselves to dismiss the classes and order the children, who, as the Commission may imagine, were terrified and bewildered by the descent, to go to their respective homes. The School was not padlocked.

The Montreal Jewish Cultural Centre, whose premises, by the order of Premier Duplessis, have been padlocked for one year, was built and equipped in 1947 with funds contributed by members of the United Jewish People's Order and by the members of the Jewish community of Montreal, at large.

Since the Padlock Act does not require that the Attorney-General of Quebec shall prove to the satisfaction of any court of law his contention that the above named premises were indeed used for "the propagation of communistic propaganda or doctrines", or in any way to justify the arbitrary action, the United Jewish People's Order, as tenants of the building and as the organization responsible for the program which was conducted in the Jewish Cultural Centre, desires through this opportunity of appearing before your Commission, to establish the true facts.

—The United Jewish People's Order is not a communist organization. It is a fraternal, cultural and educational order, embracing upwards of one thousand men and women in Montreal,—part of a nation-wide organization with branches in Toronto, Winnipeg, Vancouver, Calgary, Hamilton, and other cities across Canada,

—The U.J.P.O. offers medical, hospitalization and death benefits to its members and their families—most of whom are working men and women—at modest cost.

—The U.J.P.O., concerned with the economic welfare of the Canadian people, fights against high prices, the abolition of rental controls, for the respect of trade union and democratic rights.

—The U.J.P.O. provides a centre for social and fraternal activities for its membership. It devotes a large part of its activity and budget to the subsidization of Jewish education for over six hundred Jewish children.

—The U.J.P.O. sponsors the cultural and educational activities of dramatic, choral and literary groups. I should mention here that the

choirs of our organization are well known. Honourable senators will appreciate that the choir in Montreal, for instance, finds it almost impossible to exist, to have a home for its rehearsals for concerts, while at the same time a similar choir in Toronto, sponsored by the same organization, and recognized for its contributions, will, this May 31st, upon invitation of the CBC, appear over a nation-wide network. I will lay before the committee some comments that have been made by outstanding musical critics about the choir of the U.J.P.O.

—The U.J.P.O. provides low cost vacations for adults and children in well-run summer camps in the country. It provides library and reading-room facilities for the educational advancement of its membership.

—The U.J.P.O. participates in campaigns of the Jewish community and of the community at large, in every city where it is established. It has carried out Red Cross work, War Bond drives, campaigns for European refugee relief and for aid to the state of Israel. It is affiliated to and forms part of the Canadian Jewish Congress.

I would mention here that on one or two occasions Senator Roebuck himself spoke on the platform of this organization:

The CHAIRMAN: Sponsoring some war activities in the early part of the war when I was your guest; is that not so?

Mr. BIDERMAN: That is correct, Senator Roebuck, and I only hope that this will in no way affect your standing in the country.

Hon. Mr. ROEBUCK: I guess my standing is all right!

Mr. BIDERMAN: And continuing from the brief: It is for such purposes and to provide a home for such activities that the U.J.P.O., through its members, and through the contributions of thousands in the Jewish community of Montreal, raised the funds to build this Cultural Centre, which today at Mr. Duplessis' command, stands padlocked and barred against entry.

These are the facts. If Mr. Duplessis now, for his own reasons accuses us of having used the building for "communistic propaganda", we can only point to our program, which is a matter of record in the country, and deny his charges flatly.

If further rebuttal must be brought against the false charge of communism, we would cite the fact that many Jewish organizations availed themselves of the use of our facilities, and that as recently as last Autumn our auditorium was placed at the disposal of a religious congregation which there conducted divine services during the High Holy Holidays.

The Duplessis Padlock Act has been on the statute books of the province of Quebec for more than ten years. During this time it has been widely criticized as an invasion of federal jurisdiction, as an unconstitutional act, as an infringement of the basic rights of freedom of speech, press and assembly. It has yet to be upheld by the highest courts of our land.

But we believe it requires no legal mind to deduce from this latest application of the Padlock Act that its unchallenged application does violence to the most elementary rights of people who, under this law itself, have no recourse to law, and who, though their right to carry on as an organization cannot be abrogated, find themselves evicted and deprived of their property and of the means whereby to carry on their legal and unchallengeable right to function as an organization.

We believe that no Act in any country pretending to observe the principles of democracy has ever vested in one man such wide and unaccountable powers as the Padlock Law gives to the Premier and Attorney-General of the Province of Quebec. With a mere stroke of the pen, he can and does destroy a legal

organization and confiscate its assets, and in spite of statements which would have it otherwise, his conduct is beyond challenge in any court of law, as specifically provided in Section 6 of the Act, which reads:—

At any time after the issuing of an order in virtue of section 4, the owner of the house may, by petition to a judge of the Superior Court sitting in the district wherein such house is situated, have the order revised upon proving:—

(a) That he was in good faith and that he was in ignorance of the house being used in contravention of this act, or;

(b) That such house has not been so used during the twelve months preceding the issuing of the order.

It will be seen that any relief from the autocratic acts of the Attorney-General found in this section is completely illusory. In the first place the relief provided is available only to the owners of the premises and not to those who have leased it or are making use of it.

The CHAIRMAN: Has that been ruled in the courts?

Mr. BIDERMAN: That is the official ruling of the Act. In the documentation you will find the Act, and you will find that this is so—that only the owner has the right to appeal.

Hon. Mr. DAVIES: I take it, then, that the U.J.P.O. does not own the hall itself?

Mr. BIDERMAN: Officially and technically the U.J.P.O. does not own the hall. It is not in the name of the U.J.P.O. The hall belongs to the Laurier Avenue Realty Company.

Hon. Mr. GOUIN: What is the name of that company?

Mr. BIDERMAN: The Laurier Avenue Realty Company. Secondly, the burden of proof and the onus is on the person seeking relief, contrary to all concepts of British practice and justice. And finally, the person making application to the court, and in all cases he must be the owner, is restricted to the grounds that he was entirely unaware that the premises were being used "to contravene the Act", or that the acts or incidents giving rise to the contravention of the Act did not take place,—but in no case can a petitioner ask the court to rule that the Act complained of or printed matter concerned is or is not communistic. This is a decision to be made only by the attorney-general and to be challenged by no one. And in fact, the attorney-general is not bound and does not, in his order to padlock, give any details whatsoever of any alleged activities or incidents which according to him are communistic and have thus violated the Act. The committee will note from the order authorizing the padlocking of the Jewish Cultural Centre, that they are informed only, "Whereas for some time the said Act has been systematically violated". No details of when, where, how or by whom the Act was violated are given. In other words, none of the organizations affected has the remotest idea of the details of the charges against them. The procedure under the Star Chamber hundreds of years ago we believe equals this procedure in its anti-democratic concept.

To complete the picture one must realize that the terms communistic or bolshevistic are not defined in the Padlock Law.

It is obvious therefore, that the attorney-general of the province of Quebec is the sole and undisputed master of what type of social, religious, political or any type of organized activity or individual thinking shall take place in the province of Quebec. What has happened to these organizations can happen without any stretch of the imagination at all, to any society, to any trade union, to any political group, to any religious group, to any minority group.

To all this is added the fact that the prerogative writs against the Crown have been abolished in the province of Quebec. Thus it can be seen indeed, how dismal is the picture of civil liberties.

The honourable gentlemen will appreciate how essential it is that no person should have the autocratic and limitless powers conferred by the Padlock Act. This Act violates in practice and in concept every single cherished tradition and precedent of British justice and the concept of British government upon which our constitution is based.

As Mr. B. K. Sandwell summed it up in the February 7th issue of *Saturday Night*—and it is to the credit of many Canadian newspapers and journals that this passage has been widely quoted,—

... (Mr. Duplessis) does not have to produce any evidence, either before a court or before the legislature or before the bar of public opinion. He is the absolute master of every piece of property in the province of Quebec, so far as the provisions of this law extend. He could close the Palace of the Anglican Archbishop of Quebec, or the Anglican Cathedral, for that matter, and nobody could say him nay. He is policeman, prosecutor, judge, sheriff and hangman. The Padlock Law makes him so. NB

Happily, the dire provisions of this law have not yet been visited upon the Anglican Church in Quebec, but Mr. Sandwell's remarks serve to point up the general insecurity which is gaining ground among men and movements whose philosophies do not jibe with that of the reigning authorities in Quebec. It is not too much to assume that the shameful events which occurred at Shawinigan Falls so recently received no small impetus from the general atmosphere of repression which has its fountainhead in the Padlock Law. If a Jewish fraternal order can be thrown out into the street by the premier in Montreal, then a protestant sect can be stoned in Shawinigan, and its property made uninhabitable by slightly different means, and that too may be legal . . . for there is no longer any regard for the due process of law in high places, and brickbats have an eloquence which is often unanswerable, especially when the target is a minority.

The nation-wide resentment against this undemocratic and un-Canadian law is a matter of public record.

I have here, honourable gentlemen, certain editorials dating back to the year 1937 from every type of newspaper—the *Globe and Mail*, the *Star*—from Conservatives and Liberals, who have spoken out against this law. It seems that it is the unanimous public opinion in Canada that this law should be repealed. I shall leave these editorials with you so that you may ponder over them.

We believe no piece of legislation in the history of Canada has ever called forth such countrywide denunciation as the Padlock law. Speaking in the House of Commons on Tuesday, May 2nd, Prime Minister St. Laurent pointed to the fact that: "One attorney-general (Premier Duplessis) was attempting to enforce a Padlock Law. There was resentment about it in many parts of Canada."

In an editorial in the French-Canadian newspaper *Le Haut-Parleur*, published by Senator Bouchard, which I place before the Committee it is pointed out:

The direction of *Le Haut-Parleur* has not the slightest idea whether the property of the U.J.P.O. has been used for the propagation of communism or not.

One fact is outstanding: An organization whose activities extend over a quarter of a century has been padlocked under the authority of a law which does not allow the said organization to defend itself of the charges of which it is the object.

The editorial concludes: "We cannot protest too strongly against that spirit of ostracism of which is guilty the government of a man who believes he is untouchable".

In an editorial in *Le Canada*, reprinted in the *Montreal Star* of May 4th, on the question of repressive measures against communism, it says in part: "The pursuit of communism may furthermore give rise to grave abuses on the part of unscrupulous politicians, who like some simple minded folk, are too given to call everybody communist who does not agree with them".

I contend the opposition to this law is in no way exclusive to the provinces outside of Quebec. The great freedom and liberty loving traditions of the French Canadian people are equally violated and trampled upon by this vicious piece of legislation. Let it be noted and underlined that the French Canadian people who cherish so dearly their own rights and fundamental freedoms, were the first in the British Empire, who under the leadership of that great patriot in Canadian history, Louis Joseph Papineau, granted full and equal rights to the Jewish minority in the province of Quebec.

We desire, before this Committee, to associate ourselves with the demands which have been made by all those individuals and organizations for the enactment of a Bill of Rights which shall establish for every Canadian, whatever his opinions may be, the rights of free speech, free press, free association and free assembly, and we ask that these rights be established so firmly that none can infringe upon them for any reason, except by recognized process of law. Until and unless such a Bill of Rights becomes integral to our constitution, no organization, no minority grouping, no individual is safe from autocratic and despotic repressions by men and parties whose interests and prejudices are served by these means.

We are aware that this Committee, in a document already made public, has seen fit to recognize the Declaration on Human Rights as set forth by the United Nations Organization as a goal towards which we in Canada must strive. We would here heartily endorse that Declaration and seek that its provisions be made operative under the laws of this land, so that those who come after us may recall your contribution to the preservation of Canadian liberties with pride and satisfaction.

EXHIBIT "A"

MONTREAL, Jan. 27th, 1950.

Received from Morris Winchevsky Cultural Center the following articles for examination.

- One briefcase belonging to Harry Freed.
- Ban the bomb petitions
- UJPO Youth Division reports
- Statement of purpose UJPO
- Collection books Sid Markman Campaign
- One group photo
- Circular Meet the Youth Division
- Tickets Dyson Carter
- Tickets Bury the Dead
- Tickets What next for Israel
- Tickets Waiting for Lefty
- Books Never to Forget
- One envelope personal stock of Harry Freed
- One envelope personal stock of Molly Markman

New receipt books fees—deposit-campaign files
 Laurier Ave. realties rent form “
 J. Assistance Social Org. dues “
 Deposit book “
 Bazaar receipts “
 Files Youth Division Top & Second
 Files Camp and Kinder
 Files MWJS Top one (Correspondence and bills)
 Files Laurier Ave. R. (Correspondence and bills)
 Files Jewish Ass. and UJPO
 Files Bottom Building campaign
 Old receipt books and bank statements, old check books in a box
 Notices re Father Duffy
 Miscellaneous letters Youth Division
 Two envelopes containing notes books bulletins, letters (Desk of Harry
 Freed)
 One folder of miscellaneous papers
 Booklets and Jewish Life
 One Underwood typewriter 3871992-5
 One Gestetner 66E (electric) 2 extra rollers and screen and paper weight
 One Imperial Jewish typewriter Z175413
 One Elliott Addressograph machine Ha 1016A
 One Art Calendar
 Campaign cards
 One folder old stencils
 Two metal boxes containing campaign cards and bills
 One box of delegate pins
 Two drawers of file containing material issued or received by Biro-
 Bidgan C.
 One Ledger of Laurentian Vacation Club
 One box UJPO ensign pins
 National executive reports of UJPO
 Petitions Ban the Bomb
 Two reports of Peace Movement
 Three paper folders of correspondence
 Two photos of UJPO convention
 One book of raffle tickets
 Four pamphlets Land Without Capitalists by Dyson Carter
 One small note book
 One wire recording spool
 One folder of assorted papers and notes
 One stenographer note book
 One financial report of the National Office UJPO
 One Loose Leaf with typewritten and handwritten notes
 Three proofs of gathering picture
 One envelope of addressograph plates
 One Kinderland camp receipt book
 One paper folder containing misc. papers and cards
 One envelope containing typewritten Jewish sheets
 One batch of typewritten and handwritten papers
 One typewriter Smith Corona 1A2009060C14
 One envelope containing lists of names
 One book Departure by Howard Fast
 Three booklets by Dorise Nielson
 Four issues of Jewish journal from Poland
 10 Great Conspiracy against Soviet Russia

One A Clothing Worker
 One Tolstoi
 Biro Bidjan minutes and notes
 Seven box containing receipts, bills, cards and misc. of the Laurentian V.
 Club and M.W.S.
 One bundle of Second National Convention UJPO
 One bundle of collection forms
 Samples of Publications, forms of the UJPO and M.W.S.
 Two yearly leather bound volumes of Canadian Jewish Weekly.

(Signed) PAUL A. BENOIT
 Officier Special
 Police Provinciale.

EXHIBIT "B"

CLOSING ORDER
 (Translation)

to Mr. J. P. LAMARCHE, K.C.
 Director of Provincial Police,
 Montreal.

SIR:—Whereas the statute I George VI, Chapter 11, entitled "An Act to protect the Province Against Communistic Propaganda" was sanctioned in March 24, 1937.

Whereas the said law was incorporated in the Revised Statutes of the Province of Quebec, 1941, Chapter 52 of the said Revised Statutes.

Whereas paragraph 3 of the said statute reads as follows:

3. It shall be illegal for any person who possesses or occupies a house within the Province, to use it or allow any person to make use of it to propagate communism or bolshevism by any means whatsoever.

Whereas Paragraph 12 of the said Statute enacts as follows:

12. It shall be unlawful to print, to publish, in any manner whatsoever or to distribute in the Province any newspaper, periodical, pamphlet, circular, document, or writing whatsoever propagating or tending to propagate communism or bolshevism.

Whereas for some time now the said statute is being systematically violated in the house bearing civic number 5101 Esplanade Avenue or Street, in the City of Montreal.

I, the undersigned, Attorney-General of the Province of Quebec, having been credibly informed of the said infractions and violations order you to close for all purposes whatsoever, for one year from the execution of this order, the house bearing civic number 5101 Esplanade Street or Avenue, in the City of Montreal, and furthermore you are authorized by these presents, and I order you in consequence to seize and confiscate all newspapers, periodicals, pamphlets, circulars, documents, or writings whatsoever printed, published or distributed in contravention of the said statute.

Quebec, January 24, 1950.

THE ATTORNEY GENERAL.
 (Sgd) M. L. DUPLESSIS,

True Copy
 (Sgd) M. L. DUPLESSIS,
 Attorney General of the Province
 of Quebec.

EXHIBIT "C"

AN ACT TO PROTECT THE PROVINCE AGAINST COMMUNISTIC
PROPAGANDA

Chap. 52 Revised Statutes of Quebec, 1941

1. This Act may be cited as Act Respecting Communistic Propaganda 1 Geo. VI, c. 11.

2. In this act the following terms and expressions shall have the meaning hereinafter given to them:

(1) The word "house" shall mean any building, shelter, penthouse, shed or other construction, under whatever name known or designated, attached to the ground or portable, erected or placed above or below ground, permanently or temporarily; and in the case of a house within the meaning of this paragraph situated partly in the territory of the Province and partly outside of such territory, the word "house" shall mean the portion situated within the territory of the Province of Quebec.

(2) The word "person" shall mean and include any individual, corporation, association, partnership, firm, trustee, lessee, agent or assignee;

(3) The word "owner" shall also include his lawful representatives. 1 Geo. VI, c. 11, s. 2.

3. It shall be illegal for any person who possesses or occupies a house within the Province to use it or allow any person to make use of it to propagate communism or bolshevism by any means whatsoever. 1 Geo. VI, c. 11, s. 3.

4. The Attorney-General, upon satisfactory proof that an infringement of section 3 has been committed, may order the closing of the house against its use for any purpose whatsoever for a period of not more than one year; the closing order shall be registered at the registry office of the registration division wherein is situated such house, upon production of a copy of such order, certified by the Attorney-General. 1 Geo. VI, c. 11, s. 4.

5. Any peace officer is authorized to execute such order by availing himself of the necessary assistance. 1 Geo. VI, c. 11, s. 5.

6. At any time after the issuing of an order in virtue of section 4, the owner of the house may, by petition to a judge of the Superior Court sitting in the district wherein such house is situated, have the order revised upon proving:

- (a) That he was in good faith and that he was in ignorance of the house being used in contravention of this act, or:
- (b) That such house has not been so used during the twelve months preceding the issuing of the order.

A notice of at least six clear days of the place, date and time of the presentation of such petition must be served by bailiff upon the Attorney-General. 1 Geo. VI, c. 11, s. 6.

7. In the case of sub-paragraph (a) of Section 6, the judge may decree the suspension of the order, if the owner furnish in favour of the Crown such security as the judge may fix guaranteeing that such house will not be again used for such purposes.

The registrar of the registration division in which such house is situated must, upon receipt of a certified copy of the decree of the judge, cancel the registration of the closing order.

The Attorney-General may upon application to a judge of the Superior Court sitting in the same district and upon proving that use is being made of the house in contravention of this act, obtain a new decree re-establishing in force the closing order. The security shall be exigible immediately upon the issuing of such decree.

The Criminal Cases Recognizance Act (Chap. 26) shall apply to the security contemplated by this section. 1 Geo. VI, c. 11, s. 7.

8. In the case of sub-paragraph b of section 6 the judge may cancel the order. Upon production of a certified copy of the decree of the judge, the registrar shall cancel the registration of the closing order. 1 Geo. VI, c. 11, s. 8.

9. Any judgment rendered in virtue of sections 7 and 8 shall be final and without appeal. 1 Geo. VI, c. 11, s. 9.

10. The Attorney-General may, at any time after the issuing of a closing order, permit the occupation of the house on such conditions as he may determine, if it appears to him that such occupation be necessary for the protection of the property and the effects therein contained. 1 Geo. VI, c. 11, s. 10.

11. The Attorney-General may at any time revoke a closing order and have the registration thereof cancelled by notice to the registrar. 1 Geo. VI, c. 11, s. 11.

12. It shall be unlawful to print, to publish in any manner whatsoever, or to distribute in the province any newspaper, periodical, pamphlet, circular, document or writing whatsoever propagating or tending to propagate communism or bolshevism. 1 Geo. VI, c. 11, s. 12.

13. Any person infringing or participating in the infringement of section 12 shall be liable to an imprisonment of not less than three months nor more than twelve months, in addition to the costs of prosecution, and, in default of payment of such costs, to an additional imprisonment of one month.

Part I of the Quebec Summary Convictions Act (Chap. 29) shall apply to prosecutions for infringements of section 12, 1 Geo. VI, c. 11, s. 13.

14. Any constable or peace officer, upon instructions of the Attorney-General or his substitute or of a person specially authorized by him for the purpose, may seize and confiscate any newspaper, periodical, pamphlet, circular, document or writing whatsoever, printed, published or distributed in contravention of section 12, and the Attorney-General may order the destroying thereof. 1 Geo. VI, c. 11, s. 14.

EXHIBIT "D"

Partial list of organizations who have protested the padlocking of the U. J. P. O. Cultural Centre.

Brilliant Local No. 216, District 18, United Mine Workers of America.

International Association of Machinists, Vancouver Lodge No. 692.

Sydney Garage Workers' Union, Sydney, Nova Scotia.

Vancouver Labour Council.

International Fur and Leather Workers' Union of United States and Canada.

C.I.O.—C.C.L. Local 197.

International Fur and Leather Workers' Union of United States and Canada.

C.I.O.—C.C.L. Local 510.

United Electrical, Radio & Machine Workers of America, Local 527.

District Council No. 26, U.A.W.—C.I.O.

U.A.W.—C.I.O. Local 439.

U.A.W.—C.I.O. Local 200.

South Parkdale Forum, Toronto, Ont.

Local 7946, District 26, United Mine Workers of Am., Reserve Mines, Cape Breton, N.S.

Peoples Co-Operative Limited, Winnipeg, Man.

United Electrical, Radio & Machine Workers of America, Local 512.

United Electrical, Radio & Machine Workers of America, Local 518.

United Automobile Workers, C.I.O., Local 252.

United Electrical, Radio & Machine Workers of America, Local 521.

United Electrical, Radio & Machine Workers of America, Local 520.

Colborne Refinery Workers, Local 637 International Union of Mine, Mill and Smelter Workers.

Montreal Slav Committee.

District Conference of Association of United Ukrainian Canadians, Montreal.

United Electrical, Radio & Machine Workers of America, Local 527.

United Auto Workers, C.I.O. Local 200.

National Executive Board, United Jewish Peoples Order.

General membership meeting, United Jewish Peoples Order, Toronto.

United Garment Workers of America, Local 253.

Sudbury Mine, Mill & Smelter Workers Union, Local 598.

United Electrical, Radio & Machine Workers of America, Local 507, Executive Board.

United Electrical, Radio & Machine Workers of America, Toronto, Joint Board.

Winnipeg Fur Dressers & Dyers Union, Local 175, I.F.L.W.U.

United Mine Workers of America, District 18, East Coulee, Local 7331.

Civil Rights Union of Toronto.

United Electrical, Radio & Machine Workers of America, Hamilton Westinghouse Local.

Local 439 U.A.W. Massey Harris at a meeting with Local 439.

Ontario Federation of Trades & Labour Congress.

Canadian Congress of Labour, Montreal Central Council.

Civil Liberties Association of Toronto.

Civil Liberties Union, Montreal.

43 prominent Protestant clergymen of Montreal.

Approximately 12,000 signatures on UJPO Petition requesting removal of padlock.

Jewish youth councils of Toronto, Montreal, Winnipeg and other cities.

The CHAIRMAN: Thank you, Mr. Biderman.

Hon. Mr. GOUIN: Mr. Chairman, I do not wish to take much time of the committee, but there are certain comments that I should like to make. I have not been able to attend the committee's meetings regularly, for I have been busy elsewhere, in attendance at other committees which are sitting at this stage of the session. At the meeting here when Mrs. Spaulding referred to the Padlock Act in the province of Quebec, I had to differ from the legal interpretation which she gave of it. I know very well, Mr. Chairman, that your attitude is that this is an open committee, and that all Canadian citizens are welcome to come and make representation.

The CHAIRMAN: Yes.

Hon. Mr. GOUIN: Well, in my humble opinion, representations that have been made here about the Padlock Law are an insult to my native province, and are not in accordance with either the law or the facts. As a senator representing the province of Quebec, it is my duty to protest, and this I am doing now. In the present case referred to, I understand that the owner of the Laurier

Avenue Realty Company did not apply to the courts. I do not know what your personal opinion in the matter is, Mr. Chairman. You may be inclined to think that the owner had a good case. The law has been so far considered constitutional. Sooner or later it may come before some higher tribunal but to date no appeal has been taken. If a person does not deem it appropriate to take the recourse of appealing to the courts, I think it is not the function of this committee to listen to denunciations which, if I understood them correctly, were purely and simply insults to the premier and the province of Quebec. He is a political opponent of mine, but at the same time he is the first citizen of my own province and also a representative of my race and, I will add quite frankly, my personal friend.

The CHAIRMAN: May I express my apology—I use that word in a philosophic way—from the Chair? You must recognize that this is a public body, and whatever opinions the Chairman may have he cannot censor the material that is laid before us. Now, it is perfectly obvious that this committee cannot constitute itself a court for the trial of special individual cases. That is perfectly clear. We have not the machinery to do that, and we hear only one side of the case.

Hon. Mr. GOUIN: That is my point, Mr. Chairman.

The CHAIRMAN: We cannot discuss the broad general principles that it is our duty to consider and at the same time blue-pencil the statements made by witnesses—at least, I cannot do that, and I cannot constitute myself a censor as to who shall come before the committee. It has been an open committee. The delegation will probably recognize that we are not revisers of the administration in the province of Quebec. We have no such authority in this committee. We are not in a position to pass upon this particular incident, and I do not know that it is our function even to pass upon the Padlock Law. I am myself mystified as to what the Padlock Law is and what it does. So far as general opinions of this delegation and others with respect to liberty, freedom and so on are concerned, I think they are welcomed by this committee. So far as the special incident is concerned, we are not in a position to try it.

Am I not sound in my view of what is taking place? This is not a court of revision, either for the incident itself or for acts of politicians or statesmen on one side of the political fence or the other, or even for the rights of the parties. I cannot see what the Chair could have done other than what I have done, that is to hear the delegation and then have our views expressed with regard to it.

Hon. Mr. ROSS: Have you a copy of the Padlock Law here?

The CHAIRMAN: No.

Mr. BIDERMAN: A copy of the law is attached to that brief, at the back, as Exhibit C.

Hon. Mr. DAVID: Have the articles that were seized been returned to the centre?

Mr. BIDERMAN: No, sir.

Hon. Mr. DAVID: Do you rent your place sometimes to other associations?

Mr. BIDERMAN: Yes, we do.

Hon. Mr. DAVID: Did you ever rent it to communist groups—without knowing who they were, maybe, but to communist groups?

Mr. BIDERMAN: I think Mr. Silverberg could answer that question.

Mr. SILVERBERG: We have rented the hall to various organizations. I remember on one occasion, in a time of elections, we rented to the Labour Progressive Party, at a time when that party could get halls everywhere in the province of Quebec. I do not recall any other time that we did rent it to them.

Hon. Mr. DAVID: Was there at any time a school organized in that centre?

Mr. SILVERBERG: What kind of school?

Hon. Mr. DAVID: That is exactly what I want to know.

Mr. SILVERBERG: No schools except our own children's schools.

Mr. BIDERMAN: We realize what Senator Roebuck has said, that this committee is not here for the purpose of passing on the Padlock Law, but we say that this incident is a most glaring example of the need for a Bill of Rights in Canada which would make it impossible to do such things. On the question of the law I would ask Mr. Feiner to make a few comments.

Mr. ABE FEINER: Mr. Chairman and honourable members, with your kind permission I would like to make a very brief statement on the law in its application. I certainly subscribe to what the honourable Chairman has said, that this is not a court of revision of particular cases, but as the chairman of our delegation has just pointed out it is only in perhaps a dramatic presentation of a particular case that the need for certain legislation is shown, possibly the need for certain constitutional amendments to safeguard certain liberties which we consider important, and which I respectfully submit are considered important by the universality of Canadian citizens. By a dramatic incident I think perhaps we bring the meat of the matter before the committee, not as an abstract thing, but as a particular example of an organization deprived of its home and its assets without what is considered in law due process.

Might I respectfully point out to the honourable members of this committee that the Padlock Law violates, in my respectful opinion, no less than five of the articles of the universal declaration of the rights of man, and with your kind permission I will briefly refer to them. I refer first to article 2 of the declaration, of which I have only the French text before me. I translate freely:

Everyone can take advantage of all the rights and liberties proclaimed in this declaration, without distinction as to—I omit certain words—political opinions. . . .

We therefore have it stated, according to this declaration of the rights of man, that every person is entitled to avail himself of the rights in this charter, without distinction, of political opinion. I respectfully submit, and I do not think it needs much argumentation, that the Padlock Law contravenes this principle.

Then I come to article 8, which I again translate from the French:

Every person is entitled to an effective recourse. . . .

I respectfully underline the words "effective recourse". A recourse which is in fact an illusion is no recourse at all. It must be an effective recourse, and was so recognized by the drafter of this constitution. I respectfully submit the Padlock Law gives no effective recourse from the three sections of the law which have been used, I respectfully submit, to give it an appearance of dealing with real estate, while in effect it tends to outlaw political thinking.

The most important section of the act is the one providing for the arrest and imprisonment of a person propagating what the act calls communism or bolshevism, but that section has never been applied. When raids take place thinks are confiscated and the property is padlocked, but no person has ever been arrested. That part must not be put to the test of the courts.

Hon. Mr. ROSS: What do you mean by that?

Mr. BIDERMAN: Apparently it is considered dangerous to arrest anybody under this section and have the section tested in the courts.

Hon. Mr. ROSS: Well, why do you not have it tested in the courts?

Mr. BIDERMAN: We cannot arrest anybody, sir. Only the police can arrest people.

Mr. FEINER: If they were so sure that the law was constitutional, why wouldn't they arrest people under this section? Let us say the police make a raid on a place where gambling is supposed to be taking place. Well, they arrest the people found there.

Hon. Mr. Ross: But you could start proceedings and have the matter brought before the courts, in order to have its constitutionality tested.

Mr. FEINER: I respectfully submit, 'sir, that the most ingenious minds have been consulted about this. I do not want to make a distinction in this matter, so I will rather say that eminent members of the bar—I have no doubt that others are at least equally ingenious, and many people are more eminent than the ones who have been consulted—but to my knowledge eminent members of the bar have been consulted on this. I might say that there were two cases which have gone before the courts. One was *Fineberg v. Taub*, in which the late Chief Justice Greenshields held that the law was valid. The second case was *Elbling v. Switznan*, which is presently under advisement in the Superior Court of Montreal, and I cannot discuss the case, but I can say as a fact that the validity of the law was challenged by the attorneys for the defendant.

Hon. Mr. DAVIES: Excuse me, did you say that the Chief Justice of the province of Quebec decided the law is valid?

Mr. FEINER: The late Chief Justice did, yes, sir.

Hon. Mr. DAVIES: Wouldn't the next step have been to appeal to the Supreme Court of Canada?

Mr. FEINER: You are right, sir, but I believe the defendant did not have the means to take the matter any further. As to the case which is now under advisement, I do not wish to comment on it. Of course I do not know what the judgment will be, and I do not know whether it will be appealed, but it is theoretically possible that it will be appealed. But may I make this distinction? The right of appeal that I have been talking about is an entirely different matter from what I think you have in mind, sir.

Hon. Mr. REID: Section 6 of the act says, "At any time after the issuing of an order in virtue of section 4, the owner of the house may, by petition to a judge of the Superior Court sitting in the district wherein such house is situated, have the order revised upon proving" certain things.

Mr. FEINER: My clients have not got the right to make a petition, because they are not the owners of the premises, they are tenants. And may I point out to you, gentlemen, that there was a confiscation of movable property—books, documents, typewriters, addressing machines and so on. With respect to that part of the act there is no appeal whatsoever. In this case I believe four typewriters, and an expensive electric mimeographing machine, an expensive addressographing machine and other equipment worth substantial amounts of money were seized by the police.

Hon. Mr. WOOD: What would they be used for in an association such as yours, an addressing machine and four typewriters?

Mr. FEINER: For notices of meetings.

Hon. Mr. WOOD: Four typewriters?

Mr. SILVERBERG: Two were Jewish and two English.

Mr. FEINER: It is a cultural organization, sir. I do not know how many notices have to be prepared, how many sheets of sing-songs and copies of papers for the choir. And I am now given to understand that one machine was the personal property of the secretary of the Montreal branch.

Hon. Mr. DAVID: But was a claim made to a judge for the recovery of possession of these articles?

Mr. FEINER: May I respectfully submit, sir, that there is no such right in the province of Quebec. That sounds like a dramatic statement, but I as a member of the bar say it is so.

Hon. Mr. DAVID: What do you make of article 6?

Mr. FEINER: That is not for the recovery of the effects seized, sir. Article 14 provides for the confiscation and destruction of articles seized. If you will refer to the Closing Order itself, Exhibit B, you will find that there are two parts to that order. One part is padlocking; the second part is the confiscation. The owner of the building might have had, not the order cancelled, but the lifting of the padlock. There is no provision in the law to apply to a judge for the return of effects seized. We might take an ordinary action.

Hon. Mr. DAVID: Would not the general law apply?

Mr. FEINER: Except this, that we would have to proceed by petition of right, which is entirely at the discretion of the Attorney General to grant or refuse.

The CHAIRMAN: Not if you sued the ones who did the seizing, if they seized illegally.

Hon. Mr. DAVID: I don't know. They are acting as officers of the Attorney General.

Mr. FEINER: They are acting as officers.

Hon. Mr. DAVID: There is a doubt.

Mr. FEINER: May I say this, sir: it is a complicated question of law, and I only wish I had an hour of time—

The CHAIRMAN: Yes. We cannot pass on it here.

Mr. FEINER: I would like to point out that when we said in our brief that prerogative rights are abolished, that is not a fanciful statement, I refer specifically to Article 87a of the Code of Procedure of the Province of Quebec, from which I read:

"No proceeding by way of injunction, mandamus, or other special or provisional measure shall lie against the government of this province or against any minister thereof or any officer acting on the instructions of any such minister for anything done or omitted or proposed to be done."

The CHAIRMAN: That is your answer.

Mr. FEINER: That is our answer.

Hon. Mr. DAVIES: I am a little confused, being a layman. I understand that there is a different code of laws in the province of Quebec that the code of laws in other provinces, and I would like to ask the Chairman, as a very well known Ontario lawyer, could such a law as a padlock law be put in effect in Ontario, or do we have different types of law for different provinces?

The CHAIRMAN: The legislature is supreme in its own jurisdiction, and if they did not infringe the Dominion jurisdiction—say criminal law, for instance—it would be entirely constitutional.

Mr. FEINER: I suggest that a very similar law was declared unconstitutional by the Appellate Court of the province of Ontario.—I will send the reference immediately I get back to the office. I declare as a member of the Bar that a very similar case, dealing with an order by a court not to use premises for a period of a year, which was enacted by the Ontario Legislature, was declared *ultra vires* by the Appellate Court of Ontario some years ago. It did not go to the Supreme Court. I would be very glad, if the honourable Chairman of this committee will permit me, to mail the reference of that case to him tomorrow.

Hon. Mr. DAVID: Can you remember the reason for the closing of that house in Ontario?

Mr. FEINER: It was a disorderly or gaming house.

Hon. Mr. GOUIN: Before you go any further: under Article 14 it is only written documents that are confiscated. Concerning your typewriters—I always try to be fair with everybody—it seems that you have a fair case.

The CHAIRMAN: I do not understand why there has not been a welter of cases on this law, but there does not seem to have been.

Mr. FEINER: May I suggest that technical difficulties are tremendous. In this case, let us say that it strikes the members of the committee that the constables charged with the execution of this order went away beyond their mandate and seized articles which were not writings, such as typewriters and things of that kind. In one case I remember—it is not this case—an automobile was seized. There are two ways of dealing with this matter. You can take action by petition of right, and owing to the legal delays and the congestion of rolls in the province of Quebec it will take approximately three years for that case to come to trial. Or you can beg and wheedle and try to persuade the constable in charge to be a good boy and give you back one or two things. As a member of the Bar, my interest is to get some results for my clients. There is the alternative of taking a doubtful lawsuit which would depend primarily on the question of the granting of a petition of right. Otherwise I cannot sue. May I point out that there is a case starting tomorrow in the courts in Montreal in which a petition of right was denied a person to take an action. It is in another matter. I do not want to refer to it today but as you know, there is a case starting tomorrow in Montreal against the Attorney General, as an individual. Incidentally it raises a number of questions. The denial of a petition of right—

The CHAIRMAN: We must go on, gentlemen.

Hon. Mr. DAVID: I see that in the Roncarelli case the Prime Minister has been put in the case personally.

Mr. FEINER: That is the case I am referring to, sir.

Hon. Mr. DAVID: Well, don't you believe that in a case like the one you are citing the same thing can be done.

Mr. FEINER: May I point out that to succeed against the Prime Minister personally—

Hon. Mr. DAVID: I am not advising you to do it!

Mr. FEINER: May I point out as a lawyer that we must prove deliberate malice, the way I understand the law, on the part of the Attorney General. In an ordinary action in damages I do not have to prove deliberate malice.

Hon. Mr. DAVID: I understand: you are right. May I ask you, sir, how long after the election and how long after this hall had been rented to the Labour-Progressive party was the seizure made?

Mr. SILVERBERG: The election was, I think, last June, and this padlock was put on on January 27.

Hon. Mr. DAVID: There has been no letter written to the Attorney General, or the Prime Minister—who is the same—to recover these typewriters and other things that, surely, he did not intend to specify as communistic?

Mr. FEINER: I do not wish to affirm categorically facts of which I am not certain. I believe there have been cases—other cases—in which such things have been returned. And I believe that in other cases typewriters were not returned.

Hon. Mr. DAVID: But in this case has a letter been written to the Attorney General?

Mr. FEINER: Not to the Attorney General.

Hon. Mr. DAVID: Drawing his attention to the fact that typewriters were seized?

Mr. FEINER: I understand certain démarches were made to the officers in charge in an attempt to persuade them to return some of the effects.

Hon. Mr. DAVID: Do you not think a direct appeal to the premier would be better?

Mr. FEINER: I think he is a very busy man and he delegates these things to some of his officers.

Hon. Mr. DAVID: Mind you, I am not here to defend the Prime Minister of Quebec, but I would not like anything unfair to be said. I really believe that if a letter were sent to him and his attention were drawn to the effects that were seized in that case he would have no hesitation about giving them back.

Mr. FEINER: I can affirm, sir, that in at least one other case the return of typewriters was categorically refused.

The CHAIRMAN: Now we must go on. We have been three-quarters of an hour on this.

Mr. FEINER: May I refer to two more articles of the declaration?

The CHAIRMAN: Well, cannot you do it in just a moment, because really there are others who have their case to present.

Hon. Mr. GOUIN: There is one point, Mr. Chairman, concerning the relations between the two organizations. We were told that the United Jewish People's Order have built the building, and that technically they were not owners, but I am not criticizing their legal set-up: they have a perfect right to it, and I am anxious to be fair to them; but under these circumstances it seems that the Laurier Avenue Realty Company, if it could prove that the premises had not been used for the propagation of Communism or Bolshevism, really had a very fair case to present to court. I am not trying to criticize unduly.

The CHAIRMAN: Or give legal advice!

Mr. FEINER: You have been extremely kind. I shall try to answer this question in thirty seconds. To expose the position properly as a lawyer would take at least half an hour.

The CHAIRMAN: Exactly.

Mr. FEINER: In effect we are asked to go into court and produce in court evidence of every single meeting that has taken place in twelve months in that hall. We are not reproached with any special act. We must put before the judge proof as to every song, a resumé of the presentation of every speech of every speaker that has taken place in the last twelve months; because we have to prove a negative.

We are presumed guilty. We must prove before a judge every single thing which occurred in a building three storeys high and which contains twenty odd rooms. We rent the hall to many people and put all that into the record; and then what? And then the judge will say that it is an act of the administration by the Attorney-General, and that he is not going to revise the opinion of the Attorney-General.

Gentlemen, I respectfully draw your attention to the term "effective recourse". If we were faced with, say, five specific acts and speeches made on a certain date, we could go to court; but we are faced with nothing. We are faced with fog and obscurity, and we go to court to prove nothing; to prove that we did not do a thing. We do not know what we did not do.

Hon. Mr. TURGEON: The very basis of human rights and fundamental freedoms is the condition of good will and tolerance. That is why I am saying

something now. I do not agree with my very good friend and colleague, Senator Gouin, when he says he feels this group is making a sort of tirade—that is my word and not his—against the province of Quebec. I do not believe that that is either the purpose or the accomplishment of the delegation in so far as they have spoken to us today. As we listened to the reading of the brief we heard some very good words said about the province of Quebec in connection with the treatment of the people of the Jewish race, and I am drawing this deliberately to the attention of the committee.

I do not come from Quebec. I am a Roman Catholic and come from British Columbia, having been born in New Brunswick, but I want to say that I hate the very principles of the Padlock Law. I am a bitter opponent of Premier Duplessis and of his government which put the Padlock Law into operation, but I am a little afraid—and I am speaking now as a member of the committee—that what has taken place as the result of the Padlock Law is unwisely being made a sort of ground work for presentations made by groups with honest intentions to this committee. We were told at a meeting of this committee last week that only in the province of Quebec is it against the law to distribute leaflets or pamphlets on the street and in public places without receiving authority to do so. That is not true. Two days after we were told this in our committee some people were picked up in Ottawa and forbidden to distribute pamphlets relating to the Peace Congress which was about to take place in Toronto. I am not a lawyer and I am speaking purely from recollection of casual newspaper reading, but I think that three or four years ago a man in Vancouver was arrested on a street corner for circulating leaflets in language denouncing people of the Jewish race. He was picked up quite correctly, but there must have been a law against what he was doing or he could not have been arrested for circulating; but every time somebody is arrested in the province of Quebec for circulating something against the people who happen to be the majority of that province, it is brought to our attention by people who are asking for things which I think they have a perfect right to ask for. I think we would accomplish more if we could just establish a better foundation, one based on good will and tolerance rather than on fear which, if it does not arise from prejudice, certainly leads to it.

As I have said, I do not like this Padlock Law. I detest it. I am not a communist but a bitter anti-communist. I said in a similar committee to this a few years ago that I would not support any legislation suppressing communism in Canada, but I am an absolute anti-communist both politically and economically. In connection with the padlocking of this particular hall, what I am trying to imply is that I do not think, with all due respect to my political enmity who brought the Padlock Law into existence, that this Padlock Law was applied in this case because of the general nature of the group, the racial origin of the group handling the legislation. That is one thing I do not think we should allow to get into the press. I do not believe the group here thinks that, but one would imagine that there is a complaint that the Padlock Law was exercised in this case because of the Jewish origin of the people who own or rent that building and carry on work there. I admit that I have never read the Padlock Act, but I noticed it is an Act to protect the province against communist propaganda. I wish to point out that in Exhibit "A" to this brief—and I am looking at it very hastily because I did not have it until it was circulated a few minutes ago—we see a list of the documents and articles which were seized in this building. I notice the first one is "Ban the Bomb Petitions". At this particular moment this "Ban the Bomb Petitions" stuff is what has been talked about by this Peace Conference. Our friend from England was out here the other day, but he was refused permission to land in the United States. I recently spoke about the atomic bomb in the Senate and I made a definite suggestion that we should give way to Russia to the extent of asking

for a meeting of the Atomic Energy Commission to discuss some ways of banning the bomb. I suggested that we should ask for a meeting without the Chinese nationalist representatives being present, because Russia objects to them. But I do not like to see here "Ban the Bomb Petitions".

Then there are items such as "Notices re Father Duffy". Father Duffy is a person whom I don't think has been kicked out of the Catholic Church but who has been denounced by bishops of the Catholic Church. But he has been going around with these people who have been creating all the fuss about the Peace Conference in Toronto whose circulars were banned in Ottawa—outside altogether of the province of Quebec. Then I see again "Petitions re Ban the Bomb". Then there were four pamphlets re "Land Without Capitalists, by Dyson Carter". Another is "Great Conspiracy against Soviet Russia". Now, when I read these documents that were seized—and I do so partly to see just what they were there for and partly to show that in my opinion these seizures bear no relation whatever to the origin of this association which were the lessees of the building—I feel that the thought of those who ordered the raid might have been entirely false; but it could have been that they had other evidence that some of the documents—and I have just mentioned a few of them—were against that law which was made to stop circulation of things bearing some approval of communism. What I wish to close with is that I do not think this group here today is trying to make any aspersions at all against the province of Quebec, nor against the majority of the people of that province; but I am just a little afraid that persons are going to come to us asking for freedom of action and are going to use that Padlock Law in such a manner as to create a feeling just as that which was created in the mind of Senator Gouin—that it is built on prejudice rather than on a true design for human rights. That is why I am taking the liberty of saying these things today and mentioning some of the leaflets that were picked up in this raid.

Mr. BIDERMAN: I know you have been very kind gentlemen, and we thank you very much. May I conclude by saying that I have a list of articles that were taken. You will appreciate, of course, that the pamphlets and books that were taken from the library were well gone over, and only those that the police felt might have anything to do with communism were taken. Of course, hundreds and thousands of others were not taken from the library.

I appreciate the remarks of the last senator, whose name I do not know, and I wish to conclude by stating that it is not the desire of our delegation to slander either the premier of Quebec or the French Canadian people. We desire to place before you the consideration of the need of a Bill of Rights in Canada, so as to make it impossible that things such as we are complaining of in this specific instance could occur. We are not here to accuse or to slander the French Canadian people. As we pointed out in the brief, we appreciate the fact that Quebec was the first province in the British Empire that granted full and equal rights to the Jewish minority.

Hon. Mr. DAVID: How many judges of the Jewish faith are there in Canada?

Mr. BIDERMAN: There are some. There was a recent appointment that we know of.

Hon. Mr. DAVID: Where?

Mr. BIDERMAN: In the province of Quebec.

Mr. FEINER: So far as I know, the only judge of a High Court in Canada sits in the province of Quebec.

Mr. DAVID: He is quite a good judge, too.

The CHAIRMAN: Now, gentlemen, if you are through with this delegation we will call Mr. Major. I may say that Mr. Major has some precedence here today,

because he appeared before us at a previous meeting but yielded the floor to other delegations, and when he finally did get up to speak it was time to adjourn and the committee rose.

Mr. EDMOND MAJOR, representing the Civil Liberties Union of Montreal: Mr. Chairman, may I introduce my delegation? This is Mr. Gordon McCutcheon, of the Civil Liberties Union, Montreal; Mr. Jean Paré, Vice-President of the United Electrical Associations, and Mr. Henri Larocque, a representative of the Boot and Shoe Union, an affiliate of the Canadian Congress of Labour.

With your permission I will present my brief in French.

Hon. Mr. DAVID: Might I point out to you, Mr. Major, that the majority of the committee speak English.

Hon. Mr. GOUIN: It would be in your interest to speak English rather than French.

Hon. Mr. DAVID: Poor Quebec! Another sacrifice!

Hon. Mr. GOUIN: If he wishes to be understood, by the majority of the committee, it would be better for him to speak in English.

Mr. MAJOR: Honourable members of the committee, I do speak English, but not fluently.

Hon. Mr. KINLEY: Have you a copy of your brief in English?

Mr. MAJOR: Yes, sir. Very well, then, I will read it in English:

Honourable Senators:

On behalf of the Civil Liberties Union of Montreal we wish to thank you for the opportunity to present this brief to your committee. Permit us at the same time to express our appreciation of the democratic spirit which has prompted your inquiry into the subject of human rights and fundamental freedoms in Canada. You understand, Honourable Senators, that we were somewhat surprised to receive your invitation because, during these last years in Quebec, the state of public affairs inspired by the Padlock Law has been such that any person directly or indirectly associated with the defence of civil liberties is not only not invited to appear before a legislative committee, but is even likely to be persecuted.

Hon. Mr. DAVID: Why do you say that "any person directly or indirectly associated with the defence of civil liberties is not only not invited to appear before a legislative committee, but is even likely to be persecuted"?

Mr. MAJOR: First, may I say that I am not a lawyer; I am an insurance agent. We have had many cases happen that are a restriction of the liberty of practising a person's own religion. I am thinking of Shawinigan Falls. Most of the population of Shawinigan Falls, and even the priest there, opposed what was done and denounced it, but we sent telegrams and have written letters to the Attorney General of the province—that is, this organization has sent telegrams and letters to the Attorney General of the province—asking him to prosecute the people who did those things. We never received even an answer.

Hon. Mr. DAVID: What do you call persecution?

Mr. MAJOR: Well, I am just a French-Canadian—

Hon. Mr. DAVID: What is your occupation?

Mr. MAJOR: I am an insurance salesman. When I go to a public place and I speak about civil liberties and I say that I am president of l'Union des Libertés Civiles, immediately about twelve persons ask me "Are you a communist." It is things like that which I mean. When I wrote this brief I discussed the contents with the executive committee.

Hon. Mr. DAVID: Who was the founder of the Civil Liberties Union of Canada? I understand the Montreal Union is only a branch.

Mr. MAJOR: The Civil Liberties Union of Montreal was organized before the national organization that you are referring to. I was one of the founders of it.

Hon. Mr. DAVID: In what year?

Mr. MAJOR: Last year, sir, if I remember well.

Hon. Mr. DAVID: Who are your officers?

Mr. MAJOR: I know some of them.

Hon. Mr. DAVID: I am sorry, Mr. Chairman, to have to put these questions, but it is always important, I think, for the committee to know with whom we are dealing before we listen to a brief.

The CHAIRMAN: My only worry is the passing of time.

Mr. MAJOR: Myself, I am the manager. I am an insurance salesman and I am a veteran—I was an officer in the last war, but I enlisted as a private. The vice-president is Mr. Donald Heaps, who is graduating this year.

Hon. Mr. WOOD: Where does he live?

Mr. MAJOR: I don't know, sir.

Hon. Mr. DAVID: He is one of your officers and you don't know where he is living?

Mr. MAJOR: I know he is living in the campus of McGill. He is graduating as a pastor this year, and he is living in one of the buildings surrounding McGill. I don't know where is his home.

Hon. Mr. DAVID: Oh, I see.

Hon. Mr. WOOD: You took it upon yourself to prepare this brief without consulting the officers?

Mr. MAJOR: Oh, no, all the officers were consulted. The executive committee was consulted, and we discussed the contents of the brief. Somebody had to write it, you see, and I wrote it.

Hon. Mr. DAVID: Who are the others?

Mr. MAJOR: They all live in Montreal. Mr. Edward Sloan is an engineer, he is the secretary of the organization. Mr. Wilfred Maurier—

Hon. Mr. WOOD: Give us the addresses of these people.

Mr. MAJOR: Montreal. They all live in Montreal. Miss Muriel Fullerton, Jean Sylvestre, Jack Spiers, Anthony Kachmar, Mme. L. R. Hamelin, Mme. Murray Lapin, H. Legal, G. McCutcheon, Miss Beryl Truax, Louis Rodriguez, Rev. Glendon Partridge, and J. Levy.

Hon. Mr. DAVID: If my question is indiscreet it is very easy for you not to answer. Is it to your knowledge that any of those you have mentioned are Communists?

Mr. MAJOR: Well, sir, I will answer.

Hon. Mr. DAVID: I ask you.

Mr. MAJOR: Yes. I will respectfully say that I never asked anybody if they were or if they were not. We do not interfere with the political affiliations of our members. I imagine there might be some, and there might be others who are Liberals and others who are CCF.

Hon. Mr. DOONE: It is not a matter of concern to your organization whether they are Communists or not?

Mr. MAJOR: No: I mean, if they are Catholics, Communists, or CCF, we do not make any political discrimination of any kind.

Hon. Mr. DAVID: So your association has no objection to admitting Communists in its ranks.

Mr. MAJOR: Well, sir, we believe that we do not have to fear Communism.

Hon. Mr. DAVID: You have not got to fear it? Is that what you say?

Mr. MAJOR: Yes, because—

Hon. Mr. DAVID: Because—?

Mr. MAJOR: Because if democracy works, and people are healthy and happy, they do not have to fear anything. That is my personal opinion. I am not a specialist in the matter, but that is how I feel personally.

Hon. Mr. GLADSTONE: Is Mr. Heaps a son of the former member of Parliament from Winnipeg?

Mr. MAJOR: No, sir.

This brief will endeavor to show how the Padlock Law of Mr. Duplessis has provided the essential atmosphere for the general repression of our fundamental rights as human beings and our democratic liberties as Canadians. This being established we will put forward some specific proposals for the preservation of our rights and liberties and we will suggest to your Committee some immediate measures which we believe you could undertake to assist in achieving that aim.

Human Rights and Fundamental Liberties

We would like to emphasize, Honourable Senators, that we have omitted from this brief any formal definition of the nature of human rights and fundamental liberties, or even any enumeration of these rights and liberties. It is our opinion that the Universal Declaration of Human Rights, the product of lengthy labours by experts in this subject of the principal countries of the world, as well as the theoretical studies on this aspect of the question which have been or will be submitted to you, and also your own considerable experience in affairs of state, will have informed you on this point far better than we could hope to do.

What we wish to place before you, Honourable Senators, and before the tribunal of public opinion, is the state of affairs in the Province of Quebec with regard to human rights and fundamental freedoms. Liberty, for which our forefathers fought in 1837 and on other occasions, is no more than a word today in our Province, and a word which will even be forgotten in the near future if the gravity of the situation in Quebec, where democracy itself is in peril, is not fully realized.

Hon. Mr. DAVID: Mr. Chairman, right there you can see what the frame of mind of this gentleman is. There is only one corner of this country of ours where human rights and freedoms do not exist, and it is, again, the poor province of Quebec.

Mr. MAJOR: May I say that I am a French Canadian and I love my province, and I did not come here to insult the province of Quebec and I did not come here to insult French Canadians.

Hon. Mr. DOONE: Is not that a very broad statement—"Liberty is no more than a word in our province"?

Mr. MAJOR: Well, sir, this is what I mean. As I was saying, I wrote this thing: we discussed the contents and I wrote it as I felt it. You see, what I mean is this: we have some very beautiful law in our province, but if it is only theory, if in fact we make protestations and nobody answers, you see—

Hon. Mr. DAVID: Is it not to your knowledge that one day—I am permitted to say this—former Prime Minister Bennett told a caucus of his supporters here in the house that the last bulwark against Communism in Canada would be the province of Quebec? Is that the reason why you all attack the province of Quebec?

Mr. MAJOR: Sir, may I say again that I do not want to attack the province of Quebec. I am just concerned with the fundamental rights and liberties of men. I am a French Canadian.

Hon. Mr. DAVID: That paragraph is a direct attack against the province of Quebec, I am sorry to say. Anyway, go ahead.

The CHAIRMAN: You go ahead and read it.

THE PADLOCK LAW

(An Act Respecting Communist Propaganda, Ch. 52, R.S.Q. 1941)

Provisions of the Law

In essence, this law makes of one man alone policeman, prosecutor, judge and sheriff. This man is the Attorney-General of the Province. Under this law, the Attorney-General is empowered to order the padlocking, for a period of one year, of any building that he, and he alone, claims has been used to propagate communism or bolshevism by any means whatsoever; further, he is empowered to order the seizure and confiscation of any newspaper, periodical, pamphlet, circular, document or writing whatsoever, printed, published or distributed in the Province, which he claims propagates or *tends* to propagate communism or bolshevism. The law further provides that any person participating in the printing, publishing or distribution of such material shall be liable to imprisonment.

Limited and Uncertain Recourse to the Courts

It has been remarked that the owner of a building which has been padlocked may petition a judge of the Superior Court to have the Attorney-General's order suspended or cancelled. But what must he prove to obtain redress from the court? He has two alternatives:

- (a) To prove that he acted in good faith and was not aware that his building was used contrary to the law.

If he adopts this course of action, he justifies, without proof, the action of the Attorney-General. Without it having been proved to him or to anyone else except Mr. Duplessis, that his building has been used to propagate communism, he must petition the court for clemency.

- (b) To prove that his building has not been used to propagate communism by any means whatsoever during the twelve months preceding the issuance of the order.

In our opinion, the only way to prove that would be to prove that the building had not been occupied for a year. Without having been on the premises continually during the three hundred and sixty-five days, how could he prove that his building had not been used to propagate communism by any means whatsoever? Moreover, how does he know what communism is under the law?

The judge may declare that he cannot go beyond the law in his judgment and that the law empowers the Attorney-General himself to determine whether or not there has been communist propaganda carried on. If the judge should decide that the court has the authority to decide this question, on what legal basis will his decision be determined? There is no definition of communism in this law or any other law. In this latter case, the judge must rule, not according to law, but according to his personal opinions and perhaps his prejudices.

Hon. Mr. GOUIN: "His prejudices"! Mr. Chairman, they go pretty far in this brief. This is the last remark which I shall make. It is a direct accusation against the judiciary of the province of Quebec to pretend that our judges are suffering from prejudices. I do not intend to enter into an argument about what has to be proved, but it is generally considered in the province of Quebec that our judges still use common sense. I shall listen to all this without commenting further, but I cannot accept this whole statement of Mr. Major.

Hon. Mr. DAVID: You are evidently trying to make a case against the province of Quebec but I think the Attorney-General of that province can defend

himself. I am sure of it; but do you know that in Australia a law much more restrictive than the one passed in Quebec is now before the parliament of that country? It is a restrictive law concerning communism.

Mr. MAJOR: Yes, sir, I have read that.

Hon. Mr. DAVID: Have you also seen that in the United States a senator there has proposed a law to curb communism? He suggests that all communists should be registered.

Mr. MAJOR: That I do not know.

Hon. Mr. DAVID: Well, it is before Congress now.

Mr. MAJOR: (Continuing to read from the brief):

And what about the tenant? He is put out on the street and his property confiscated. Here again, the normal process of the law is scorned and the victim is punished without proof of his guilt. He cannot petition any court to have the padlock removed and to obtain return of his possessions.

In all cases where the Padlock Law has been used, whether or not the building in question was padlocked, the police have seized and never returned such things as typewriters, mimeograph machines, membership and mailing lists, administrative records and other possessions which do not even come within the terms of the law by the widest stretch of the imagination.

Hon. Mr. DAVID: Are you making a reference to any specific case?

Mr. MAJOR: In all cases.

Hon. Mr. DAVID: You say "in all cases where the Padlock Law has been used".

Mr. MAJOR: Yes.

Hon. Mr. DAVID: How many times has the Padlock Law been used since it was put into effect?

Mr. MAJOR: I discussed the matter with the Executive Committee, and there are two lawyers on that committee and that is the opinion given.

Hon. Mr. GOUIN: Mr. Major, do you know anything personally about what you are talking?

Mr. MAJOR: Yes, certainly.

Hon. Mr. DAVID: Well, how many times has the Padlock Law been invoked or enforced in the province of Quebec, and against whom and what for? I am tired of listening to these criticisms without having any facts before us.

Mr. McCUTCHEON: If I may be permitted to make a statement here: we have no facts about how many times the Padlock Law has been put into effect, but I would like to point out that in many of these seizures they have taken such items as typewriters and so on. They are enumerated there.

Hon. Mr. DAVID: Excuse me. I know of a case where there was a school for communism in St. Hypolithe near Montreal and everything was not seized there, but I certainly agree with that seizure.

Mr. McCUTCHEON: If I may interrupt, sir, what we are referring to in the brief is that what is seized does not come reasonably within the Act—such items as typewriters and so on.

Hon. Mr. GOUIN: Senator David is quite right when he says that all material was not seized, and we have heard the contrary by the United Jewish Organization a few minutes ago.

The CHAIRMAN: Please let the witness read his brief. I have two other delegations, both of whom I am sure will be more acceptable to the committee. Please let him continue.

Hon. Mr. GOUIN: Even when it is false.

Hon. Mr. DAVID: I am sure of one thing. If Ontario were placed in the same position as Quebec is placed in, the honourable chairman would probably be the first to interrupt.

Hon. Mr. GOUIN: I join in the remarks of the Honourable Senator David.

Mr. MAJOR: Continuing to read from the brief:

Constitutionality of the Law: This so-called Padlock Law has been attacked in many quarters and for many reasons. It is held by some legal authorities to be unconstitutional in that it provides punishment for actions which are no offence under the Criminal Code, thereby encroaching upon Federal jurisdiction.

The section of the law which permits the Attorney-General to padlock buildings has been defended by comparing it with another provincial law, which permits the Attorney-General to padlock buildings which have been used for purposes of prostitution or gambling. The comparison, it has been pointed out, only serves to strengthen the legal and constitutional criticism of the Padlock Law. Before the Attorney-General can padlock a building which has been used for prostitution or gambling, there must have been a prior conviction of its occupants under the Criminal Code, and, moreover, even after that the Attorney-General must apply to the courts for the padlocking order and produce as evidence the record of conviction under the Criminal Code. No such prior conviction is required before the Padlock Law can be applied, and could not be required for the obvious reason that the actions prohibited or punished by the Padlock Law do not constitute a crime under the Criminal Code.

Hon. Mr. DAVID: Mr. Chairman, do you not think we have discussed the Padlock Law long enough? Could we not pass to some other paragraph?

Hon. Mr. KINLEY: I think we have been loaded up with the Padlock Law.

Mr. MAJOR: Very well. Next is "Suppression of the Rights of Labour in Quebec",—The Case of the Assistant Director of Organization of the C.C.C.L.

Hon. Mr. DAVID: Tell us what C.C.C.L. stands for?

Hon. Mr. GOUIN: The Confederation of Catholic Trade Unions of the province of Quebec.

Mr. MAJOR: During the month of February this year the Assistant Director of Organization of the C.C.C.L. was sentenced to six months in prison by a court sitting in Sherbrooke as a result of charges laid against him by the provincial police during the strike in Asbestos last summer.

Hon. Mr. KINLEY: You are attacking the courts again. Why should this man not be punished if he did something wrong?

Mr. MAJOR: I am just telling the facts, sir.

Hon. Mr. DAVID: If this judgment is to be attacked I want to see it before us so we can judge for ourselves. One has no right to attack a document which is not before the committee. We should be able to form our own opinion.

The CHAIRMAN: You have not got it, I suppose, have you?

Mr. MAJOR: No.

Hon. Mr. DAVID: Well, let him pass to another item. We want evidence of what is said. We have no documents to rely on.

Hon. Mr. ROSS: Further on you quote the evidence.

Hon. Mr. KINLEY: And he quotes the affidavit of one of the strikers.

Hon. Mr. DAVID: Yes.

Hon. Mr. ROSS: That seems objectionable.

Hon. Mr. KINLEY: What you are trying to express is the high-handedness of the police in the handling of this situation?

Mr. MAJOR: Yes, sir.

Hon. Mr. KINLEY: After they beat up the police. They corralled the police and beat them up when the police were not strong enough in numbers to handle the situation when they blocked the roads into the city. Now you want to complain about the way the police handled a situation of that kind.

Mr. McCUTCHEON: Mr. Major is in a difficult position because of having to speak in English.

The CHAIRMAN: Mr. Major, have you not read enough of the brief? You have told us you are objecting to the Padlock Law and to the way that the case was handled by the police. Is that not enough? Do you draw any conclusions from these things?

Hon. Mr. KINLEY: In the brief there is one heading to which I should like to call attention, "Liberty is assured for none in Quebec today". That is a pretty broad statement, and I should hope it is not so.

Mr. MAJOR: Can I carry on from there, Mr. Chairman?

The CHAIRMAN: Go ahead, if you wish to.

Mr. MAJOR: Then I will read from the brief there:

Liberty is assured for none in Quebec today

This campaign of repression against labor's rights which we have traced in outline for you and of which the spearhead is this so-called law against the propagation of communism has been the culture in which was bred a whole train of violations of human rights and fundamental liberties. The following are some outstanding examples.

1. The president of the Alliance of Catholic Teachers of Montreal was summarily dismissed as a teacher by the Catholic School Commission. Deeply conscious of his responsibilities to his professional association, he had honourably refused to be frightened by the threats which hung over him on account of his union activities.

Hon. Mr. DAVID: Here again, Mr. Chairman, we are going into a matter which is absolutely within the jurisdiction of the Quebec educational authorities. Mr. Guindon was relieved from his teaching duties for some years—Senator Gouin can correct me if I am wrong—but finally this year the President of the school commission asked him to make his choice between continuing as President of l'Alliance des Instituteurs and resuming his duties as a school teacher. Well, he refused to present himself at the school until some time later when, if I remember correctly, he appeared one day at the opening of school and then went back to his office. Now, mind you, I am not taking sides in this matter. I do not know who is right or wrong.

The CHAIRMAN: That is just the point. We are not in any position to review these cases or to pass upon them.

Hon. Mr. DAVID: But this brief is going to form part of a public document and I refuse absolutely to accept it as such.

Hon. Mr. GOUIN: I protest also, Mr. Chairman.

The CHAIRMAN: What do you suggest we do about it?

Hon. Mr. DOONE: It is a shameful thing, Mr. Chairman, to have these things placed on a public record, when we have no knowledge of whether or not they are true. The brief contains the assertion of the group that such and such is so, but we have no means of determining the accuracy of the assertion.

Hon. Mr. DAVID: I would make a motion that the brief be not included, but I know very well what the result will be. These people will say, "We went before

the Senate Committee on Human Rights and Fundamental Freedoms and they did not even want to publish our brief". These people will then claim that is a repression of human rights and fundamental freedoms.

Mr. PARE: Mr. Chairman, we came before this committee after receiving an invitation. We do not expect everything we say will be accepted by the members of the committee. I do not know parliamentary procedure very well, but I would assume that in preparing the report if the committee disagrees with certain statements in our presentation they will take the opportunity of pointing that out. This committee has more facilities for obtaining information than we have, I hope, as to the matters that we refer to in our brief, and I am quite sure that you will take the opportunity of checking the statements that we make.

The CHAIRMAN: On the other hand, there is the physical limitation as to time. I apportioned half an hour, and you have already taken more than that time.

Hon. Mr. DAVID: That may be my fault.

The CHAIRMAN: I do not think the word "fault" is correct there. Members of the committee have full right to take objections to statements made, but nevertheless there is a limit to the time at our disposal.

Hon. Mr. DAVID: Mr. Chairman, I want to answer Mr. Paré. He suggests he can obtain evidence to answer statements in the brief. Well, are we to call before us the judge who has given a judgment, and the president of the School Commission in Montreal, and the president of the Alliance of Teachers? If we are to be in a position to refute every statement in the brief, we shall have to call twenty-five or more additional witnesses here.

Mr. PARE: We are not stating facts. We are presenting statements that we have seen in the newspapers.

Hon. Mr. DAVID: So you do not know anything personally about what you have stated here?

Mr. PARE: We know certain facts. I know that our union was prevented from holding trade union meetings in the town of Montreal East.

Hon. Mr. DAVID: Did that organization at any time have the reputation of being communistic?

Mr. PARE: I do not think that has anything to do with it. We were holding trade union meetings, and they had the opportunity of coming to those meetings and checking what was going on. They were trade union meetings.

Hon. Mr. WOOD: I think that all over Canada, not only in Quebec, it is necessary to get a permit to hold meetings.

Mr. PARE: I am not talking about the province of Quebec as a whole. I am referring to the town of Montreal East.

Hon. Mr. DAVID: I would like to ask you one question. Supposing a communist party were to come to Montreal East, would you be in favour of allowing them to preach their propaganda?

Mr. PARE: I was under the impression, Mr. Chairman, that the aims of this committee were to take evidence and try to arrive at some kind of recommendation concerning human rights, and I am still trying to remain within that impression. But every time we say a word the question of the political affiliation of some individual comes up. I think that if a Civil Rights Bill is supposed to be passed, that bill is for the purpose of giving freedom to the people, regardless of their race, religion or political beliefs, and if this committee was set up to put on trial the communist ideology, then I do not think it should be called the Senate Committee on Human Rights and Fundamental Freedoms.

Hon. Mr. GOUIN: Mr. Chairman, there is one thing I want to make quite clear. What we are having presented here is not evidence, but insults and hearsay, some of which hearsay is to my personal knowledge contrary to the facts.

Mr. LAROCQUE: Mr. Chairman, the honourable members, want to hear a special case. I got a special case myself. I am out on bail. For what? Because although the right of picketing is guaranteed by a federal law, in the Criminal Code, I was arrested in Richmond Quebec, I and twenty other workers, for peaceful picketing. And now it is in the court, because they say we were parading.

Hon. Mr. DAVID: If this case is before the court I think we should not even hear about it.

Mr. LAROCQUE: We were picketing peacefully and got arrested.

The CHAIRMAN: Mr. Major, do you wish to say a word in conclusion?

Mr. MAJOR: Yes. At the end of this brief I respectfully suggest a few measures which we believe would immediately contribute to the preservation of human rights and fundamental liberties in Quebec. One of these suggestions is that your committee hold public hearings in all municipalities in our province in which there have recently occurred flagrant violations of civil liberties. We do not ask you to believe us on our words; we respectfully ask this committee to hold hearings in our province on the different cases that we have mentioned before you today.

Hon. Mr. GLADSTONE: Mr. Chairman, could pages 1 to 6 of the brief presented by this witness, certified by him as the brief of the Civil Liberties Union of Montreal, be made use of by the committee as they may desire?

The CHAIRMAN: I thought that perhaps what would happen would be that the portion of the brief that has been read and commented upon very vigorously by the senators would go into the record.

Hon. Mr. GLADSTONE: And the balance retained for the use of the committee.

The CHAIRMAN: Yes, that is what I thought of doing.

Hon. Mr. KINLEY: I think the statement about the rights of labour in Quebec should go in, because this is a much discussed subject.

Hon. Mr. GOUIN: May I ask the witness to give the list of the 114 trades unions which he alleges were refused certification? That is on page 4, Mr. Major.

Mr. MAJOR: Yes.

Hon. Mr. GOUIN: I was told by the Chairman that when Mrs. Spaulding was speaking at the last meeting she could not give any reference to that point.

Mr. MAJOR: Yes, I will do that.

Hon. Mr. GOUIN: That you knew about it. So I think we are entitled to have the list of the unions which were refused certification in 1947 and 1948.

Mr. MAJOR: Yes.

Hon. Mr. GOUIN: Or give us the reference where we can find it. She was asked, and she said she did not know.

Mr. G. McCUTCHEON: As the one English-speaking member of this delegation, I would like to categorically deny any intention, deliberate or otherwise, on the part of this delegation to cast any aspersions on the people of Quebec. As an English-speaking Canadian resident in Montreal all my life I have nothing but the highest regard and admiration for my French Canadian fellow citizens; and I would like to make it clear that I, in a democratic country, do not feel I am casting aspersions on the people of a province when I criticize acts of the

administration. If that argument were extended to its logical termination, honourable senators, I think we might find that criticism of certain well known dictators against whom this country and its people spent five years in bloody warfare would be and could have been considered as criticism of the people of their countries, and the entire people of their countries. I take my stand very firmly on that position, that I as a Canadian and a resident of the province of Quebec have a perfect right to criticize the Duplessis administration strongly and sharply as I can to seek redress for grievances which I believe exist, without in the least being accused of casting aspersions on my fellow French Canadians. I am indignant at such a charge.

Hon. Mr. DAVID: "O Liberty, how many crimes are committed in thy name!"

The CHAIRMAN: We have here representatives of the Church of England in Canada.

Hon. Mr. DAVID: That will be a little better.

The CHAIRMAN: Perhaps we may now hear them. Is Dr. Wodehouse ill?

Archdeacon HEPBURN: No, he is out of town attending a meeting.

The CHAIRMAN: Are you going to be the spokesman?

Archdeacon HEPBURN: I will be the spokesman, if I may. If you prefer, there are a certain number of copies and you can take this as read. It is not long.

The CHAIRMAN: That is for you to judge.

Archdeacon HEPBURN: I will read it quickly, if I may. There is nothing in it about the padlock law. We want a padlock for the Red Dean of Canterbury, and perhaps Father Duffy—I don't know.

Hon. Mr. KINLEY: I was glad to hear after one of the briefs that the Anglican Cathedral has not been padlocked yet. I am a Church of England man, and very glad to know that Mr. Duplessis is not guilty of that!

The CHAIRMAN: Yes. Read it, because it is not very long.

Rev. Archdeacon C. G. HEPBURN: (Reading).

THE CHURCH OF ENGLAND IN CANADA

THE DEPARTMENT OF CHRISTIAN SOCIAL SERVICE

To the Honourable the Chairman and members of the Joint Committee of the Senate and House of Commons on Human Rights and Fundamental Freedom.

SIRS:

Re Bill of Human Rights

This Council for Social Service, a Department of the General Synod of the Church of England in Canada, desires to present the following brief statement relative to this matter. The Executive Committee of the Council is fairly representative of our Church clientele. It is the only Body at this juncture, until an Annual Meeting of the formal Church Bodies might be held, which can express an opinion.

So far as this Executive can speak for the Church of England in Canada, therefore, we make these suggestions.

1. Why a Bill of Rights

Religious Grounds: We are concerned with this matter for the highest of reasons. The Christian doctrine of man is to us the truest justification for the recognition of human rights and fundamental freedoms. Every individual is

of supreme value in the sight of God, for he is a child of God by creation and, most of us believe, called to a redemption for eternal life as well as for this life. Every man, therefore, is entitled to respond to the call of the divine in him and to be given opportunities so to respond, whereby he may develop, and be developed, to the glory of God. Without certain elementary rights, generally accepted by us, man cannot so develop. The denial of those rights and freedoms retard him from using the capabilities within him. His rights, therefore must be defended against the oppression of all unrestrained *political, economic or ecclesiastical* power or any other group power. While we acknowledge thankfully that in Canada there are many democratic checks, even Christian checks, if we may so describe them, on the use of such power, we are of the opinion that the protection of all individuals against such power can be made more effective by the promulgation of a Bill of Rights.

Civil Grounds: A Bill of Human Rights, written into the Constitution of Canada by Statute or otherwise would, on the whole, be desirable. This Council recognizes that, under the slow development of British common law, the rights of individuals and minority groups before the law and in public practice have been respected as well as in any country in the world. It recognizes that there are some advantages in the flexibility of our British form of Government and of our British legal procedure, built up as they were upon the ever-developing recognition of the rights of individuals in Britain and later in our own Dominion. On the other hand we believe that a Bill of Human Rights has become imperatively necessary today in the very highly organized type of society which has developed.

1. Government, itself, has of necessity intruded into personal and family affairs in a way not visualized even a generation ago. Besides accepting its traditional functions of defence against external aggression, and the maintenance of peace and good order, Government today deals with social, educational and cultural matters involving the total life of individuals and families. While we do not quarrel with this, even while we regard most of it as necessary, we realize that there are dangers involved. It enhances, for example, the opportunity of Government on all levels in its Executive capacity to act as if possessing the functions of the Courts. Certain rights and freedoms before the law, which might otherwise be thus jeopardized, will be the more certainly recognized and respected if set forth in Statute or Constitution.

2. On the positive side it can be briefly stated that "law educates".

Hon. Mr. DAVID: Do I understand from this remark that you consider a Bill of Rights to be educational?

Archdeacon HEPBURN: And desirable, yes.

Hon. Mr. DAVID: Desirable as being educational?

Archdeacon HEPBURN: Yes.

The CHAIRMAN: A Bill of Rights would have that secondary result.

Hon. Mr. DAVID: Will you read that last sentence again, please?

Archdeacon HEPBURN: "On the positive side it can be briefly stated that 'law educates'".

Hon. Mr. DAVID: That is it. Therefore a Bill of Rights would educate the people as to rights and freedoms.

Archdeacon HEPBURN: That is the intention.

Hon. Mr. DAVID: I agree with that wholeheartedly.

Archdeacon HEPBURN: Continuing from the brief:

While this is not the primary object of a code of laws, it is certainly true, that as the law of the land becomes known to its people, they begin unconsciously

to adopt its norms and to accept its standards. While there is a native conscience in all people which has greater or less regard for the natural human rights of the individual, it cannot be doubted that when these human rights are set forth in law, there will be a more precise recognition by the public regarding them.

This, as well, will have a reflex action on the executive officers of government.

3. In our country, organized federally with three levels of government, it cannot but happen that there may be clashes of opinion regarding the definition of human rights.

We have heard a few of these this morning.

What is the norm, and who is to set it? We believe that a Bill of Human Rights set forth by federal authority, will be a standard to which Provincial and municipal authorities must look and which the law courts under all three jurisdictions will be compelled to honour.

4. Canada is a country of minority groups and for a long period of time is bound to continue to be such. These groups are divided religiously and racially, and culturally to a degree. It is the glory and the responsibility of Canada that she is fusing these people into a homogeneous nation. It will be a century-long process. In the meantime a statement of human rights, written into the law of the land, will both encourage the minority groups in the full knowledge that they have equal protection with others, and at the same time will provide the norm to which government, the courts, and the people of all groups alike, will be compelled to subscribe in the protection of the rights of all.

These are not academic statements. They have been born of our experience. There have been several instances in Canada's history, particularly during the recent war years when, under hysteria or fear, or possibly through greed or group suspicion and hatred, some of the rights of individuals or groups have suffered by government or court action or by unofficial citizen attitudes. It is our opinion that a Bill of Rights will help both the people and government of Canada to avoid similar unjust and undemocratic action in the future.

Next is a "Specific Action by the Church of England", which of course is the only church for which we can speak through this council.

At the Session of the General Synod of the Church of England in Canada, held in September 1949, the following resolution was passed. While the whole resolution is worthy of consideration, I would draw your particular attention to the third paragraph.

Recognizing the vital need for the preservation and promotion of good relations among the members of all groups in Canada, General Synod urges the clergy to give leadership in bringing to public attention and in resolving any instances of racial discrimination which may arise in our midst, and

In particular the Synod would re-emphasize the obligation of all citizens to stand for fairness and equality toward the members of all racial groups in the matter of employment in industry, in neighbourhood and social relations, and in trade and professional life;

The Synod further call upon governments in our country to do everything possible to give form and substance to the spirit of the Declaration of Human Rights of the United Nations, and to incorporate its principles in the law of the land where still necessary and possible, and

The Synod prays even more urgently that our own people will promote by friendly personal and family contacts, goodwill among all groups, and in the spirit of the Gospel seek to avoid all discriminatory feelings and actions in relation to them.

III. What Should A Bill of Human Rights Include?

We do not desire here to give a detailed statement of those rights considered to be necessary. We realize that the action of many minds is necessary in order to round out detailed statement. We would hope for an opportunity to review intensively progress statements of your Committee from time to time, or of any Bill relative to this which may be presented to parliament.

While we are glad to approve in general the Declaration of Human Rights adopted by the General Assembly of the United Nations in December 1948, and also in general the statement presented by the Honourable Senator Roebuck in the Senate of Canada on October 31, 1949, and also in general a Resolution passed by the Senate on March 20, 1950, we here give our own concise summary of those principles which we believe it wise and necessary to include in any Bill of Rights for our country. This summary was adopted by a Committee of the Lambeth Conference of Bishops of the Anglican Communion throughout the world, meeting in the summer of 1948. The Bishops accepted this statement and it has received general approval by the Church of England in Canada.

What are usually accepted as essential human rights can be grouped under four headings, and these four brief paragraphs are taken from the Lambeth Conference:

1. The right of the individual to personal security. This includes freedom from arbitrary arrest or imprisonment, from torture, and from slavery. It is essential to insist on these rights, especially as against the police State.

2. The right to life is not sufficient; man must be given the right to use his gifts or capacities in useful services. It is therefore necessary to secure for him various social and economic rights; among these are the right to work, to marry, to bring up a family, and to possess personal property.

3. Next there are the rights of freedom of speech, discussion, and association. This group includes freedom of the press and of information from different points of view. It is important that the organs of publicity should be free and that the people should have access to reliable information, for they cannot reach a right judgment on current problems if they are left in ignorance by a rigorous censorship or unscrupulous propaganda.

4. Fourthly there is the right of man to religious freedom. This is of utmost importance, for man has no true freedom unless he has freedom to worship and serve God according to the dictates of his conscience. Religious freedom means far more than freedom to worship and teach within a church building. It means also the right to propagate a religion and for an individual to change his religion without incurring political, social, or economic disabilities. In the case of children the family, not the state, should ultimately decide what religion the child should be taught. The Christian Church must be quite uncompromising in its demand for full religious freedom both for Christians and for those of other religions. Without religious freedom all other freedoms are precarious.

Hon. Mr. DAVID: Hear. Hear.

Archdeacon HEBURN: Continuing the reading of the brief: Any enactment by parliament, consistent with these principles, particularly those related to religious belief and practice, will, we believe, be acceptable to the vast majority of our Church people.

On behalf of the Executive Committee of the Department of Christian Social Service of the Church of England in Canada,

I remain,

Yours respectfully,

W. W. JUDD,
General Secretary.

Hon. Mr. DAVID: That is very fine.

The CHAIRMAN: A grand statement.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. DAVID: Sir, obviously you are not here to answer any questions that you may find indiscreet.

Archdeacon HEPBURN: Well, the bishop is not here so I might—off the record.

Hon. Mr. DAVID: Do you make a distinction between freedom of speech and licence of speech?

Archdeacon HEPBURN: I would say as a citizen, yes; and as a clergyman I think I would.

Hon. Mr. DAVID: Would you say that a person who speaks for the destruction of government or the abolition of religion is using the right of freedom of speech?

Archdeacon HEPBURN: Misusing it, I would say.

Hon. Mr. DAVID: Should that be permitted or should it not be tolerated?

Archdeacon HEPBURN: Personally I would say it should not be permitted. My own feeling as a citizen and as a clergyman is that if an individual does not believe in the form of government in the country in which he lives, he should leave that country.

Hon. Mr. DAVID: Yes, but what if he stays in the country?

Archdeacon HEPBURN: Then I do not think he should be permitted to undermine either the religious or social ways of life which those who have been duly elected to represent us have decided are in the best interests of the citizens of the country. In other words, a minority group has certain rights, but not the right to rule the country.

Hon. Mr. DAVID: Do you know of your personal knowledge, sir, that a communist, wherever he is, owes allegiance to the Kremlin and is subject to the Kremlin's orders?

Archdeacon HEPBURN: I know that from my reading and from what has been told me by others who are more in touch with their methods.

Hon. Mr. DAVID: We know from our reading—and we cannot know otherwise—that it is an accepted fact that a communist regards religion as a poison of the mind.

Archdeacon HEPBURN: Yes, as "the opiate of the people".

Hon. Mr. DAVID: Therefore should the people be allowed in a free country to propagate their ideology?

Archdeacon HEPBURN: I would say no, because I feel as a Christian citizen and as a clergyman, that they are undermining those things which are the most precious in our whole life.

Hon. Mr. DAVID: Can a communist receiving orders from the Kremlin take an oath of allegiance to any other country but Russia?

Archdeacon HEPBURN: He cannot, unless he is a hypocrite. Actually, honourable senators, there is a difference even between communists, so I have been informed, particularly by Dr. Judd, who has made a careful study of the matter. There is the communism of Karl Marx, which is absolutely irreligious and would definitely undermine any system of free enterprise. Then there is a rather specious form of communism which appeals to a good many Christian people, and I must in fairness say that I presume the Red Dean is still a Christian leader. There is a form of what once was called Christian socialism, but which might be called Christian communism.

Hon. Mr. DAVID: Can there be such a thing?

Archdeacon HEPBURN: Well, some people think so, and they even quote Scripture in support of their opinion, but they fail to realize or seem to forget that Ananias, who was a fairly well-known prevaricator, held back part of the price of the land that was sold.

Hon. Mr. DAVID: Is it not a fact that in every communistic country today every effort is being made to stop the people from going to church or listening to the preachers or clergyman?

Archdeacon HEPBURN: I believe so. If they are consistent they must do that, for it is set down for them in their text-book that religion definitely must be opposed and destroyed.

Hon. Mr. DAVID: I suppose you remember what Stalin said, in 1946, that the first duty of communists was to destroy religion wherever in the world it appears.

Archdeacon HEPBURN: Wherever it is found, exactly. In one way that is a great tribute to our religion, because they realize that it is enemy No. 1.

Hon. Mr. DAVID: Exactly.

Archdeacon HEPBURN: Some people do not need dope to put them to sleep, but Karl Marx evidently thought we had to drug our people in order to influence them. In fairness to many people who may be misguided but sincere, it should be said that they have seized hold of certain things that are really more socialistic than communistic. I know many people who advocate a Christian communism, as they call it.

Hon. Mr. KINLEY: That is a dividing up.

Archdeacon HEPBURN: Yes.

The CHAIRMAN: A community of goods, that is the original meaning of communism.

Archdeacon HEPBURN: In a socialist state, if a man has two cows he keeps one and gives one to his neighbour. In a communist state, the state takes both cows and gives the man who owned them a little milk. In a capitalist state, the man sells the cows and buys a bull. I may say that is not my idea—it is from the *Reader's Digest*.

The CHAIRMAN: Do you not think it is necessary to take a great deal of care lest the suppression of certain people with whom you disagree should develop into persecution?

Archdeacon HEPBURN: Yes, that is quite true.

The CHAIRMAN: Must it not be borne in mind all the time that by discussion one reaches truth?

Archdeacon HEPBURN: Right.

The CHAIRMAN: And that by the suppression of discussion you frequently allow untruths to become established? Is there not a great curative force in the law which will allow anybody to say almost anything, be it ever so foolish?

Hon. Mr. DAVID: Oh, no.

The CHAIRMAN: It is by the statement of foolish ideas that wise ideas gain supremacy, is that not so?

Archdeacon HEPBURN: Yes.

Hon. Mr. DAVID: Not always.

The CHAIRMAN: Not always, no, but frequently. I am only wishing to get the real mind of the witness. I do not want him to be represented as a suppres-

sionist. I do not think that suppression is the attitude of the English Church, to which I was brought up.

Archdeacon HEPBURN: Oh, certainly not. But I certainly did not intend to be speaking for the whole Church. However, the Chairman is quite right, that if you suppress anything you sometimes strengthen it.

The CHAIRMAN: After all, the English Church itself had a pretty hard start.

Hon. Mr. KINLEY: You would suppress anything that is evil?

Archdeacon HEPBURN: Yes.

Hon. Mr. DAVID: Doctors try to suppress disease. They placard a house in which someone has typhoid fever or scarlet fever?

Archdeacon HEPBURN: Yes.

Hon. Mr. DAVID: Do you not believe that disease of the mind is much more dangerous even than physical disease?

Hon. Mr. WOOD: I think we are asking this witness some very embarrassing questions.

Archdeacon HEPBURN: There is a happy medium. The Chairman has graciously reminded me that freedom is one thing and licence is another thing. I would suppress the propagation of a doctrine which undermines everything that I hold dear and for which large numbers of our fine fellows have given their lives. I would not mind the publication of a pamphlet in which people could read the doctrine, but I do not think I would let anyone propagate it in a freedom loving country. In wartime we have to take certain measures for security purposes, but in peacetime we have to be far more considerate, and wise, probably.

Hon. Mr. DAVID: You would suppress anything that endangers what we are living for?

Archdeacon HEPBURN: Yes, but I do not want to be quoted as a suppressionist.

Hon. Mr. DAVID: Suppression of evil is not improper suppression.

Archdeacon HEPBURN: No. If you have got to fight the devil, you have got to fight like the devil, sometimes.

The CHAIRMAN: On behalf of the committee, may I thank you sincerely, Archdeacon Hepburn.

Now, gentlemen, we have one more witness, Mr. Lyle E. Talbot, who has come all the way from Windsor to attend this meeting. He tells me he can conclude in fifteen minutes.

Mr. Talbot represents the Windsor Interracial Council, and you have all got a copy of his brief. Go ahead, Mr. Talbot.

Mr. LYLE E. TALBOT: I first want to express my deep appreciation of the privilege of appearing before you. I am sure that your patience has been tried this morning, but I will endeavour not to try your patience any further. If you will allow me a few moments I would like to present this brief on behalf of the Windsor Council on Group Relations. We have recently changed our name, to cover a broader scope of activities.

It is gratifying to know that the Senate has seen fit to set up a Committee to consider the question of human rights and fundamental freedoms.

Some weeks ago the Windsor Interracial Council wrote a letter to Senator A. W. Roebuck, who has since been named Chairman of your Committee, outlining the desirability of a Bill of Human Rights for Canada, supplemented by a Federal Fair Employment Practices Act. This brief is supplementary to our letter to Senator Roebuck.

In the preamble to the Universal Declaration of Human Rights as endorsed by the forty-eight nations including Canada who comprise the United Nations,

it is clearly set down that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Further, "Human rights should be protected by the rule of law."

Quoting still from the preamble: "Member states (including Canada) have pledged themselves to achieve . . . the promotion of universal respect and observance of human rights and fundamental freedoms." At this point may we ask the honourable members of the Committee: How can we, as citizens of this great Dominion, sign a declaration such as that of the United Nations, and then hesitate to enact the necessary legislation to guarantee those rights which we have so readily endorsed to the citizens of our own country?

Our forefathers came to this country with a determination in their hearts to build a nation in which freedom, justice and human dignity would forever be recognized and protected at all cost. None of us would deny that this was their intent. Even in our time, many people are coming into our country seeking and expecting that same freedom, justice and recognition of human dignity for which this country of ours is known the world over.

Within the first half of this century we have seen dictators arise who were able not only to take away the human rights of millions of people within their own countries, but to threaten the very foundations of democratic life throughout the world. Millions have sacrificed their lives to defend, reclaim or insure the fundamental human rights to their posterity. We are not called upon to make such a sacrifice at this time. The people of Canada are asking simply that our government, through whatever procedure is necessary, enact a permanent and binding Bill of Rights for Canada, embracing all of the thirty articles included in the Declaration of the United Nations.

We should like to call the attention of the Committee to the brief submitted by the Association for Civil Liberties, whose headquarters is in Toronto. This brief points out examples of recent violations of human rights in many parts of Canada by federal, provincial and municipal authorities. It outlines the parliamentary procedure involved in amending the British North America Act with regard to a Bill of Human Rights. The Windsor Council on Group Relations* wholeheartedly endorses the Brief of the Association for Civil Liberties in its entirety.

We affirm their statement that civil and political human rights, as listed in Articles 1 to 21 of the Universal Declaration of Human Rights, should be guaranteed by the Constitution rather than dependent on the attitude of any parliament or legislative body, or on the flexibility of public opinion. We moreover affirm that the social and economic human rights, listed in Articles 22 to 28, require specific legislation of a detailed character to make them effective. Civil rights are essential to the life, liberty and pursuit of happiness of every individual citizen. Political rights are prerequisite to the democratic functions of government.

We hold that to secure, defend and ensure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Within the orderly processes of such government lies the hope of the people.

We join with the hosts of Canadians who now say, in effect, "We have endorsed the Universal Declaration of Human Rights as formulated by the United Nations; we have committed our nation to protect these human rights by the rule of law; let us without further delay proceed to confirm our endorsement by carrying out our commitment".

Perhaps the members of this Committee would be interested in knowing just how discrimination is practised in the Windsor area. Many people from our city would have you believe that there is no racial or religious discrimination being practised here. They cite the facts that we have on occasion elected a

Jew as a Mayor, that our present Mayor is a Roman Catholic of French Canadian origin, that we have a coloured alderman and a coloured member of the Board of Education, and that we have just appointed a coloured City Solicitor as conclusive evidence that there is no discrimination.

But are you told that if our coloured alderman, board member, or city solicitor and their wives were to enter certain restaurants or almost any tavern in the Windsor area in which the proprietor was not aware of their identity, they would find themselves denied the services of that establishment? The technique being used to exercise discrimination in our community is very intriguing. For instance, in employment, if a young Negro applies for a "white-collar" position, he is invariably told that the firm hires only experienced help. If a older, experienced Negro applies for a similar position, he is told that the firm is looking for young people who can be trained to specialize in the firm's methods. Seldom will an employer openly admit that racial discrimination is being practised when he refuses a Negro or Jew, or a person of other undesirable ancestry.

Hon. Mr. WOOD: Why do you say "undesirable"?

Mr. TALBOT: It is undesirable from his point of view or from the point of view of certain members of the management of certain industries to have persons of these minority groups on their staffs.

Hon. Mr. DAVID: But would not, probably, the same answers be given to anybody? It is quite possible that a young man, even a young man of a more or less prominent family of any racial group, but who was inexperienced, would be told "We only need experienced help". And I hear complaints every day about men of forty-five who cannot get positions. I do not think that situation applies only to coloured people. And may I ask another question.

Mr. TALBOT: Would you like an answer now to your first question?

Hon. Mr. DAVID: Yes.

Mr. TALBOT: It is true that possibly everyone might receive the same type of answer, but the fact remains that in those places where such answers are given they deny employment to people of these various minority groups. The practice, as I said at the beginning, is very subtle. It is one which we could not bring before courts of law. In the first place, we have no law which says that a man can refuse employment to anyone because of his race, but as the managers of these various establishments desire to remain in the popularity of the public, they will be more careful in how they refuse employment to a person.

Hon. Mr. DAVID: My other question is: you say here that these different people are refused service in restaurants. That is against the provincial law of Ontario, is it not?

Mr. TALBOT: No, it is not. The provincial law grants a municipality, I believe, the power to grant licences and the power to revoke licences.

Hon. Mr. DAVID: No, but did not the provincial government two or three years ago pass a law that there should be no racial discrimination in hotels and restaurants?

Mr. TALBOT: No; they passed a law that there would be no signs exhibited which stated that an establishment was—

Hon. Mr. DAVID: —for white people only?

Mr. TALBOT: For white people, or Gentiles. These signs are prohibited in Ontario. But there is no law forbidding the practice I have mentioned.

Hon. Mr. DOONE: Have you not under the common law the right to enter that building? When a man opens a business is it not a general contract with the public that the owner must serve customers?

Hon. Mr. DAVID: I don't think so.

The CHAIRMAN: I do not think it goes that far.

Mr. TALBOT: They reserve the right to refuse anybody they deem undesirable.

Hon. Mr. DAVID: Why did the town of Dresden have to pass a bylaw to put this in effect?

Mr. TALBOT: The town of Dresden did not have a licensing bylaw. People who work in the same field as I do, the field of group relations, asked the council of the town of Dresden to pass a bylaw licensing the restaurants.

The Council did not wish to take that upon their shoulders so they asked for a referendum vote on the question of passing a bylaw, and the referendum was turned down by the people so there is still no licensing bylaw in Dresden, and the Town Council has no jurisdiction over the practice of discrimination.

Hon. Mr. DAVID: Do you not get some satisfaction from the fact that in the United States, after a year's objection to it, negro players are now playing on big league baseball teams; some of them are heroes and are the best players on their teams. I could mention some that you know: Jack Robinson, Sam Jethroe and Roy Campanella. Do you not think there is a move in the United States to decrease racial discrimination, and that it will move into Canada in the same way?

Mr. TALBOT: It is a contributing factor.

Hon. Mr. GRANT: How could a Bill of Rights enforce a man who is employing people not to use his own judgment?

Mr. TALBOT: We are asking that a statement of policy be issued by the Canadian government on the question of racial discrimination. We feel that would have a good moral effect on the employers.

Hon. Mr. WOOD: You say here "a negro or Jew or a person of other undesirable ancestry". Why not leave out the word "undesirable"?

Mr. TALBOT: I have no objection to that word being deleted, sir.

The CHAIRMAN: I think the way it reads now it expresses something you do not intend to express.

Hon. Mr. WOOD: You do not think you are undesirable?

Mr. TALBOT: No.

Hon. Mr. WOOD: Then why should you put it in?

Mr. TALBOT: I am putting the word "undesirable" in from the point of view of the employer.

Hon. Mr. DAVIES: I do not think you should.

Hon. Mr. DAVID: Evidently you meant undesirable to the employer?

Mr. TALBOT: Yes, that is what I meant.

Hon. Mr. DAVID: That is not what is expressed here.

Mr. TALBOT: Continuing the brief: In the real estate business, the same subtlety is employed in refusing to sell property in so-called restricted areas to people of certain minority groups. We can cite several cases, but will give you just one specific example. A young Negro desired to purchase a certain piece of property. He called the agent and over the telephone made a very satisfactory bargain. But when he appeared at the office to complete the agreement of sale, he was told that the property was not available, and that he should have told the agent over the telephone that he was coloured.

Certain restaurants and almost every tavern in Windsor and area follow the practice of placing "reserved" signs on every table, just in case a Negro party should come seeking service. The fact that a few Jews, Negroes and members

of other ethnic groups have succeeded in public or professional life does not minimize the demoralizing effect of the insult and injuries heaped upon the individual members of our minorities by the subtleties of prejudice and discrimination. Nothing short of a Federal law with severe penalties for violations will free Canadians of all races, creeds and national origin from the fear and stigma of discriminatory practices.

We are submitting, herewith, to be considered as part of this brief, our pamphlet entitled "How Does Our Town Add Up?", which exposes conditions in Windsor relevant to certain social and economic rights. We suggest that this pamphlet further indicates the need for government action on these vital principles. It is our firm conviction that the social and economic aspects of democratic life cannot be alienated from the civil and political aspects. We therefore urge that this special Senate Committee recommend to the government that those Articles of the Universal Declaration of Human Rights relevant to social and economic human rights, specifically Articles 22 to 28, be implemented by the appropriate legislation as soon as possible.

*The name of the Windsor Interracial Council has been changed to the Windsor Council on Group Relations since we wrote our letter to Senator Roebuck.

Respectfully submitted,

Miss Dorothy Carthas, Secretary
M. M. Sumner
Miss Grace Coutts
J. R. Harrison
Richard C. Johnston
Morris B. Seidleman
Maxwell Schott

Lyle E. Talbot, President
T. W. Walter
Mrs. John W. Jackson
Frank Marcoux
Miss Gail Lees
Harry H. Guenther
Wm. C. MacDonald

To give some idea of the structure and importance of the Windsor Council on Group Relations in the community life of Windsor, may we point out that included in the list of members of the Executive Committee named above are representatives from the following:

The Coloured Community
Public and Secondary School Teachers Federation
Jewish Community Council
Public Library Staff Association
Local Council of Women
Fellowship of Reconciliation
Co-operative and Credit Union Movements
Organized Labour Unions
Y.M.—Y.W.C.A.
French Canadian Community
Business and professional groups
Many Protestant, Roman Catholic and Jewish faiths

Although there are no clergymen on our Executive Committee, several from many denominations are Honourary Members, members of our Advisory Board, and active members of the Council.

Hon. Mr. DAVID: Mr. Talbot, I suppose you will admit that racial prejudice exists all over the world? There is racial discrimination against one or another race everywhere. Take your own race. If I am not mistaken I believe a tribe in South Africa objected to its chief marrying a white girl.

Mr. TALBOT: I read that in the newspaper.

Hon. Mr. DAVID: I mention this just to show that there is racial prejudice all over the world.

Mr. TALBOT: I am not sure of the implications in that case.

Hon. Mr. DAVIES: You do not find racial prejudice just towards the coloured and Jewish races. I am a Welshman and I spend some time in Wales every year. I have seen many advertisements in the newspapers there to the effect that unless a person applying for the job of school teacher can speak Welsh, he is not even to be considered. That is a discriminatory practice and that sort of thing is going on all over the world. It is not limited to people of the coloured races, or other minorities.

Mr. TALBOT: I am not here to speak on behalf of the coloured race alone. I happen to be Chairman of the Interracial Council. The coloured community just happens to be mentioned first in the list of organizations belonging to the Council on Group Relations, but it is only one of the different sections. All minority groups have suffered. I agree with the honourable senator in what he says about the stigma of discrimination applying to people all over the world.

Hon. Mr. KINLEY: Did you ever hear of the Scotch suffering?

Mr. TALBOT: Yes, I have.

Hon. Mr. DAVID: And the Irish?

Mr. TALBOT: Yes. I have heard of many people suffering and that is why I am here today. I have not come here for selfish reasons, but in the interest of all the Nordic groups. We feel that a mere statement by the federal government on the policy of racial or religious discrimination would have a tremendous moral effect on the people of our country.

Hon. Mr. DAVID: As the clergyman of the Church of England just said a moment ago, I suppose you would agree that it would be good for the education of all the people in Canada.

Mr. TALBOT: Definitely. Legislation is one of the most effective means of education.

Hon. Mr. DAVID: I see you mention penalties. Do you believe this Bill of Rights should have sanction?

Mr. TALBOT: Yes, I do, but just what the nature of those sanctions should be I am not prepared to say.

Hon. Mr. DAVID: But in a general way?

Mr. TALBOT: Yes, in a general way I think it should.

Hon. Mr. DAVID: So you believe the League of Nations had very little power because it had no sanctions?

Mr. TALBOT: Yes, I agree with that.

Hon. Mr. DAVID: A law without a sanction is not very effective?

Mr. TALBOT: Yes. We studied cases of fair employment practices in certain states of the United States, and we found that where there is no sanction the law is ineffective.

Hon. Mr. DAVID: Except for educational purposes?

Mr. TALBOT: Yes, except for education.

The CHAIRMAN: Thank you, Mr. Talbot. That was a very fine statement. Honourable senators, Lieutenant Colonel Hutchins, Director of Administration, Army Headquarters, Ottawa, wrote me as follows: "It occurred to me that your committee might be interested in a paper I wrote on the subject of human rights about a year ago, which was published in the Canadian Army Journal of February, 1949. I enclose six copies of the February issue of this publication, marked for your convenience". Gentlemen, I have a number of these copies.

Hon. Mr. KINLEY: Do you wish to place it on the record?

The CHAIRMAN: I have read it and I know it is an excellent article.

Hon. Mr. KINLEY: Then place it on the record.

Hon. Mr. DAVID: Mr. Chairman, before we adjourn may I say that I have a number of documents here, which I will hand to you for your own use or the use of any other members of the committee. However, I should like to have them returned later, for they do not belong to me. The documents are as follows:

Droits de l'homme et du Citoyen, 1789.

The new Constitution of Japan, the rights and duties of the people.

The Constitution of the Czechoslovak Republic, the rights and duties of citizens.

The Constitution of the French Republic, June 1946.

The Constitution of China.

The Constitution of the U.S.S.R.

The Constitution of the Argentine.

The CHAIRMAN: The Constitution of the U.S.S.R. is quite long, as I recall. I read it a long time ago. It reads beautifully. If that were the constitution of Russia it would be fine, but we know that in fact it is not. It may be their front, but it is not what they follow in practice. It is as democratic a thing as you could imagine, if the document you have is the one that I once read. I do not think we ought to place that on the record without an explanation.

Hon. Mr. DAVID: I am not suggesting that it be placed on the record.

The CHAIRMAN: Do you wish to have the other documents placed on the record?

Hon. Mr. DAVID: No. I simply thought they might be useful in the preparation of a Bill of Rights.

The CHAIRMAN: I shall be glad to have them.

The committee adjourned until tomorrow, Wednesday, May 10, 1950, at 10.30 a.m.

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THE SENATE OF CANADA

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PROCEEDINGS
of the
SPECIAL COMMITTEE
ON
HUMAN RIGHTS
AND
FUNDAMENTAL FREEDOMS

No. 8

WEDNESDAY, MAY 10, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

WITNESSES:

Miss C. Wilson, Save the Children Fund.
Mr. R. K. Ross, K.C., St. Catharines, Ont.
Mr. George Tanaka, National Japanese-Canadian Citizens' Association.
Miss Mary McCrimmon and Mr. Ben Nobleman, Canadian Youth Groups.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for 20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty, and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

- (1) No person shall be subjected to arbitrary arrest, detention or exile.
- (2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.
- (3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 18

- (1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.
- (2) Every one has the right of equal access to public service in the country.
- (3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. Moyer,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 10, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Present: The Honourable Senators: Roebuck Chairman; Baird, Gladstone, Grant, Kinley, Petten, Ross, Turgeon, Wood.—9.

The official reporters of the Senate were in attendance.

Miss C. Wilson and Mrs. C. G. Stogdill, of the Save the Children Fund, Mr. R. K. Ross, K.C., of St. Catherines, Ontario, Mr. George Tanaka, of the National Japanese-Canadian Citizens' Association, and Miss Mary McCrimmon, Mr. Ben Nobleman and party, representing the Canadian Youth Groups, were present.

Miss Wilson, Mr. Ross, Mr. Tanaka, and Miss McCrimmon and Mr. Nobleman read briefs to the committee and were questioned by Members of the Committee.

At 12.50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST

J. H. Johnstone,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, WEDNESDAY, May 10, 1950.

The Special Committee appointed to consider and report on the subject of Human Rights and Fundamental Freedoms met this day at 10.30 a.m.

Hon. Mr. Roebuck in the Chair.

Gentlemen, we have a quorum. This, by the way, will be the last open session of the committee. No more organizations or individuals, other than those present this morning, have expressed a desire to be present.

A number of briefs that have been submitted have not yet been placed on the record, the reason being that our days have been so full with *viva voce* evidence that there has been no opportunity to consider these briefs. I have just been discussing the matter with Senator Kinley and our combined thought was—and I think Senator Baird was in on it too—that from now we would devote ourselves to two things simultaneously: first, the getting of a report ready; and second, the duplicating of these briefs which somebody thinks should go on the record—that is, I will have them duplicated and have copies sent to every member of the committee, and then we can hold a further meeting and take care of the problem of putting them on the record. That seems to be satisfactory to the committee, I take it.

Hon. Mr. KINLEY: But should it be definitely stated that this is the last open sitting of the committee? Someone may want to present another brief. Would you have the open sittings closed so early in the session?

The CHAIRMAN: Well, as I have said, we must make our report. And as you remarked privately, Senator Kinley, it should be a report of which we are proud. That is our desire, but whether we have the ability to do that is another matter. Anyway, the preparation of the report will take some little time. Then, we must have the report presented to the Senate early enough to permit of its being debated there. Parliament will probably prorogue sometime around the end of June. We are already well on into May, and the weeks slip by very rapidly. So I do not propose to bring any more witnesses before the committee, on my own initiative, unless circumstances which I do not now foresee make it seem the proper thing to do. I would rather have it understood that we are closing the hearing of *viva voce* evidence today.

Hon. Mr. KINLEY: You would hear no more delegations?

The CHAIRMAN: Unless there are special reasons.

Hon. Mr. KINLEY: That is what I have suggested. The briefs that have not been presented to us by witnesses can be duplicated, as I have said, and passed among the various members of the committee before being placed on the record; and if there is anything objectionable—for instance, if there is anything scurrilous—it should not be allowed to go on the record.

The CHAIRMAN: If there is anything scurrilous, no. Now, gentlemen, we have with us today Miss Mary McCrimmon and Mr. Ben Nobleman, representing the Co-ordinating Committee of the Canadian Youth Groups. They do

not wish to be called until a little later in the morning. We also have Mr. George Tanaka, National Executive Secretary of the National Japanese Canadian Citizens Association; and Miss Cairine Wilson, representing the Canadian Save the Children Fund.

Would you like to speak first, Miss Wilson?

Miss CAIRINE WILSON: It does not make any difference to me, Mr. Chairman, in what order I am heard.

The CHAIRMAN: Before Miss Wilson begins, I should also say that Mr. Ross, a barrister from St. Catharines, has come here today with a well thought-out brief.

I think perhaps, Miss Wilson, it is not a bad idea that you shall come first.

Miss CAIRINE WILSON: Ladies and gentlemen, the Canadian Save The Children Fund is a member of the International Union for Child Welfare, which is a federation of national and international organizations for child welfare; its basic principles are formulated in the Declaration of the Rights of the Child, commonly known as The Declaration of Geneva. Its aims are to give relief, assistance and protection to all children, irrespective of race, nationality or creed.

The Declaration of the Rights of the Child

By the present Declaration of the Rights of the Child, men and women of all nations, recognizing that mankind owes to the Child the best it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured.
3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood and must be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow-men.

The CHAIRMAN: Is that all, Miss Wilson?

Miss WILSON: That is all. It was the request of the Canadian Save The Children Fund that something about the child be given to this committee. That is why I prepared this short brief to be presented to you to go on record. I am sorry it is not longer. I felt that you have enough to consider, and I feel that the declaration is really all that is needed. Thank you.

Hon. Mr. DAVID: Miss Wilson, has your association considered the matter of giving every child at birth the vaccination against tuberculosis?

Miss WILSON: We are not actually a medical organization.

Hon. Mr. DAVID: I know that.

Miss WILSON: I cannot speak on that, I am afraid, because we have not gone into that in Canada. Here in Canada we are a donor country. We raise funds and send supplies overseas; and our policy is now that we will have a Canadian project. We are working on that at present.

Hon. Mr. DAVID: Well, you are certainly "the Daughter of the Mother of the Year"!

Miss WILSON: I don't think that is fair!

The CHAIRMAN: I want to thank you for calling this to our attention when you did. It struck me very forcibly that the resolution which was passed by the Senate and which was, in effect, a copy of the Declaration by the United Nations, makes no mention of children. Obviously the child is included when you speak of "human rights" because the child is a human. But when you read that Declaration carefully you see that what the drafter had in mind was the adult, because for instance he speaks of "the right to vote" and that kind of thing. Apparently little thought has been given to the most important right, the right of the non-adult to be taken care of and brought up in decency and in wisdom. I am glad that this matter has been brought before us, and I wish to thank you. Now, is Mr. George Tanaka here?

Mr. GEORGE TANAKA: Mr. Chairman and honourable senators, before proceeding with the reading of our Association brief, I would like to say a few words. I am very greatly honoured to be able to represent my particular group of fellow Canadian citizens. It was not so very long ago that our group of Canadian citizens suffered from many discriminatory measures. Our association is particularly honoured in being permitted to appear before this very distinguished body. Our organization was formed over two and a half years ago, and the primary reason at that time for our organization to be set up was to work towards combatting the various discriminatory measures which applied at that time against Canadian citizens of Japanese origin. Now we find that most of our work which we felt was very great at that time has been completed, and now we realize that the most important work that our organization has to do is still before us, and we are very, very anxious to work with other Canadian groups and individuals towards creating a greater citizenship.

I will now, Mr. Chairman, proceed with the reading of our brief.

To the Honourable the Chairman

and to the Members of the Special Senate Committee
on Human Rights and Fundamental Freedoms:

This submission is made by the National Japanese Canadian Citizens Association and its component chapter organizations in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. This national body, which is the only one that exists, and which fully represents Canadian citizens of Japanese ancestry, was founded by a conference of representatives of various Japanese Canadian organizations throughout Canada on September 2, 1947. It has as its primary aims the protection of the civil, political, social and economic human rights of persons of Japanese ancestry in Canada and the development of a truly democratic society wherein fundamental rights and liberties are preserved for all citizens.

The Japanese Canadian Citizens Association wishes, in the first place, to express its gratitude for, and appreciation of, the Senate resolution which has established this Committee, and the original resolution of its Chairman on the subject of human rights introduced last year, and the many fine discussions in the Senate arising therefrom.

The Association feels that since its views are being addressed to a body that has, in effect, already shown much sympathy toward the question of human rights, it need not elaborate the fact its views are based on the principles of justice and democracy; and that the establishment of Constitutional guarantees against the abridgement of specific human rights and liberties entails no concessions that Canada has not already endorsed in subscribing to the Charter of the United Nations and to the United Nations Charter of Human Rights.

It is with some feeling that we make our submission to you, for it was not so long ago that Japanese Canadians were subjected to many discriminatory

measures which denied them some of the most basic, democratic civil rights and liberties. It is therefore with very deep concern that the Association tenders its contribution toward the important work the Committee has undertaken; to determine what are the basic human rights and fundamental freedoms which our democracy should protect and preserve, and assure their possession to all persons in Canada.

We are aware that many important points in regard to the subject of basic human rights have already been brought to your attention by other groups, such as the Association for Civil Liberties, which has preceded us before you and with whom we are associated. It is not our intention, therefore, to duplicate their views and recommendations, for we have studied them and endorsed them; rather, it is respectfully suggested that some aspects of the past experiences of Canadian citizens of Japanese ancestry merit consideration of the committee, as it is from these experiences a strong desire has grown which compels the Association, in behalf of its members, to make this submission in support of a broad Canadian Bill of Human Rights and Fundamental Freedoms.

When, in 1942, the federal government decreed by Orders in Council, the complete removal of the Japanese Canadian minority from the British Columbia coastal region, the sudden impact of this order shocked the Japanese Canadians into the realization that some of the basic human rights which they had always considered inviolable and which they had fully accepted in faith as Canadian citizens, were not deep and abiding rights, for they did not withstand the stress of a most critical period in our nation's life—when it is at war, fighting for its very existence.

It is submitted that a Canadian Bill of Rights must have a deep and abiding basis upon which to function, in order to give each and every member of this nation's family these basic possessions with the most secure knowledge that there will not be any discriminatory abridgement of them, to any member of any social category; especially, during critical times of great stress in our national life.

It is our belief that the action of the Senate in having appointed this committee, is in itself a reflection of a growing awareness among Canadian citizens and also the people the world over, to the great need to encourage growth of one of the instinctive and basic qualities of the human person—to the giving of consideration and justice to others.

It is recognized that a major advancement was achieved by the nations of the world, when the United Nations Declaration of Human Rights was proclaimed. This historical document, which is a source of inspiration and encouragement to us, as we believe it is to all people, was created by the nations of the world which represent the many varied races of mankind, whose origins, religions, languages, creeds and colours are as numerous as the varied groups represented.

If we are contributing to building a document of human rights, to be honoured with a place in our Constitution, we would say that it is our hope it will be of such stature that it will serve both as a protector and constant teacher to all.

Harmful Effects of Discrimination on the Individual

No one likes to be placed automatically in an unjustified or bad social category, thereupon to be forced to endure the acquired forms of discriminatory behaviour practised by members of the community or countenanced by the state, against his person. The psychological implications of such discriminatory treatment point to the harmful effect they have upon the individual's personality, giving rise to a feeling of rejection and insecurity within the person, and also causing, in varying degrees, outward manifestations of undesirable conflict and unrest within the total community.

Prior to the evacuation in 1942, when the Japanese Canadians largely lived in the province of British Columbia during a period which extended over fifty years, they were denied moral and juridical equality despite their Canadian citizenship status with the deprivation of civil, political, social and economic human rights on racial grounds. From their individual experiences, they know the harmful psychological effect discrimination has worked upon them.

When Canadians of Japanese ancestry were faced with the ultimate in the order to evacuate from their homes in 1942, they had no criterion upon which to judge what were their basic human rights and liberties as Canadian citizens, or upon which they could take faith and give voice to the nature of their undivided loyalty.

We believe it is the cherished desire of all people to establish by some means the principle of equality based upon some criterion, which will promote the idea of the dignity of the human person constantly in our daily lives, and give to all protection of individual freedom and equality before the law.

Part II

The Association submits the following as a list of specific types of discrimination denying rights which have applied against Japanese Canadians in the past solely because they belong to a particular social category:

1. Inequality in the enjoyment of the democratic right to participate in government:

- (a) By the establishment or enforcement of specific legal barriers to, or restrictions upon, the right of Japanese Canadians to vote or to be elected.

2. Inequality in the regulation and treatment of ownership:

- (a) By the establishment or enforcement of specific legal barriers to, or restrictions upon, the ownership of property by Japanese Canadians, with the arbitrary confiscation and liquidation of such property resulting in great losses suffered.

3. Inequality in freedom of movement and residence:

- (a) By establishment or enforcement of specific legal barriers to, or restrictions on, the right of freedom of movement within the borders of Canada and the provinces of Japanese Canadians.
- (b) By establishment or enforcement of laws determining restricted areas which were "forbidden" to Japanese Canadians.
- (c) By arbitrary administrative measures creating a restricted area forbidden to Japanese Canadians.

4. Inequality in personal security:

- (a) By establishment or enforcement of specific legal barriers to, or restrictions upon, the personal security of Japanese Canadians by imposing arbitrary exile upon them.

5. Inequality of opportunity for education:

- (a) By establishment or enforcement of legal barriers to, or restrictions upon, the Japanese Canadians to accept special scholarship opportunities due to denial of freedom of movement or to receive the full benefits of educational opportunities due to evacuation.

6. Inequality in the enjoyment of the right of free choice of employment, and inequality in professional opportunities:

- (a) By establishment or enforcement of specific legal barriers to, or restrictions upon, the eligibility for employment or promotion of Japanese Canadians.

- (b) By establishment or enforcement of distinctions in employment opportunities, rates of pay, to Japanese Canadians.
- (c) By establishment or enforcement of rules prohibiting or restricting access to the legal profession by Japanese Canadians.

The CHAIRMAN: Where is that?

Mr. TANAKA: That was in British Columbia; it has now been revoked.

(In support and illustration of the above statements, a classified list is given in Appendix A and B, containing most of the laws and regulations that discriminated against Japanese Canadians.)

Hon. Mr. KINLEY: As to the various restrictions imposed on the Japanese in Canada, were they not as the result of the war?

The CHAIRMAN: I was going to ask that question too, Senator Kinley.

Hon. Mr. KINLEY: I believe they were as the result of the war.

The CHAIRMAN: Do the Japanese appreciate that many of the things which you have enumerated were the result of a very distressful time, the cause being a desperate war? Do the Japanese appreciate that?

Mr. TANAKA: I am sure they do, otherwise they would not have co-operated with the government so wholeheartedly as they did.

Hon. Mr. KINLEY: Where is your home?

Mr. TANAKA: It is now in Toronto.

Hon. Mr. KINLEY: Where was it?

Mr. TANAKA: I was born in Vancouver and lived there until 1942.

Hon. Mr. KINLEY: Were you pretty well satisfied up to the time of the war?

Mr. TANAKA: No, because I was not at that time allowed to vote in provincial or federal elections.

Hon. Mr. Ross: In federal elections?

Mr. TANAKA: Yes.

Hon. Mr. Ross: Is that so?

The CHAIRMAN: I think it is. We debated it in the House of Commons and I know I moved a resolution on the subject. We had in our Elections Act a clause denying the vote to persons who were not given the vote by provincial law. That is the way it was phrased. While it was general in its terms it struck at one thing only, and that was the Japanese in British Columbia. Perhaps it included the Chinese, but I am not sure of that. Mr. King introduced a resolution softening that in some way—I forget the detail—and I followed him with another resolution saying that those restrictions should only apply to those who were not British subjects. Of course that meant that the restriction would have gone. My motion was ruled out of order.

Hon. Mr. KINLEY: Can you put your finger on any other thing that stands out as being discriminatory?

Mr. TANAKA: There were many other discriminatory measures which depended upon this restriction, the denial of the right to vote. We were not permitted to work on public works, for instance, or on Crown timber lands. And also, those who studied very hard in law were not permitted to practise law in British Columbia. We were also not permitted to enter into pharmacy. There were many other restrictive measures in employment which struck at us very deeply.

Hon. Mr. KINLEY: Were there statutes saying they could not do those things?

Mr. TANAKA: That is right, sir. There are appendices to this brief stating the chapters and the sections of the statutes. But as of April 1, 1949, most of them have been revoked. However, they were in existence for over fifty years and we had to put up with them.

The CHAIRMAN: What remains now? After all, the past is interesting, but only as a guide to the future. What remains now against Canadian citizens of Japanese origin?

Mr. TANAKA: In regard to employment in British Columbia I feel very strongly, and I am sure that there is still a very high level of discrimination in employment in British Columbia.

The CHAIRMAN: Is that not private? Is that not the attitude of the private employer? Is there anything in the law of British Columbia that says a man of Japanese origin shall be in any inferior position to anybody else?

Mr. TANAKA: No. It is a state of mind only.

Hon. Mr. KINLEY: Can he engage in the fishing industry now?

Mr. TANAKA: Yes, he can.

Hon. Mr. KINLEY: He can own a boat now?

Mr. TANAKA: Yes, sir.

Hon. Mr. KINLEY: I went all through this years ago in the House of Commons. An ardent friend of mine who thought the Japanese question was a serious one sat near me in the house, and he always said that the Japanese had two loyalties, that they never became quite separate from their home obligations.

The CHAIRMAN: What do you say to that, witness?

Mr. TANAKA: I think I can best express it from my own feelings. My feelings and my family's feelings are typical of those of the Canadian Japanese.

Hon. Mr. KINLEY: Of course, you were born in Canada?

Mr. TANAKA: Yes. But my mother and my father were born in Japan.

Hon. Mr. BAIRD: Have you ever been to Japan?

Mr. TANAKA: Yes, I was there when about a year old.

The CHAIRMAN: What are your feelings in the matter?

Mr. TANAKA: I feel very strongly as a Canadian citizen, and I might say that even in 1935 we protested the shipping of metal to Japan, which was made into bombs to be dropped upon the Chinese. And at the time of the evacuation, before that happened, we felt in our hearts that such a thing as forceful uprooting from our homes could not happen, because we are the product of our environment and our education and we went to school here. It took courage to our parents to leave Japan and come to a new country. They put their roots down in this country and they realized that they were handicapped by lack of English and the fact that they were discriminated against a group, as Asiatics, but they felt that they could withstand all those discriminatory measures because they wanted to put their future in their children's hands. And they worked for their children, and we are their children. And at the time of the evacuation we felt, as persons who were born in Canada, educated in Canada, whose friends are other Canadians, that such a thing as being not trusted could not happen to the extent that we could be uprooted from our homes. And I would venture to say without hesitation that if we were permitted to volunteer in the armed forces in 1942 we would have had a large number in the Canadian Armed Forces, and I think that in itself would have wiped away a great deal of the fear that was created by Pearl Harbour.

Hon. Mr. KINLEY: You were not allowed to volunteer?

Mr. TANAKA: We were not till early in 1945, although many of us tried.

The CHAIRMAN: Even though you were Canadian born?

Mr. TANAKA: That is right.

Hon. Mr. KINLEY: I suppose now that Japan's glamour as a world power has gone, that would make a difference with a lot of people?

Mr. TANAKA: Well, actually, as far as I am concerned, there was no glamour. In fact, I leaned over backwards to deny almost that I was of Japanese ancestry, because all our lives we have been forced to bear this taunt from other people, the suspicion that we were Japs and not loyal to Canada, but we could not understand that because we did not have it in our hearts.

Hon. Mr. KINLEY: Do you notice a difference between living in Toronto and living on the Pacific Coast?

Mr. TANAKA: There is a difference, but we can see here the same problem that we faced in British Columbia that the Jewish Canadians face and the coloured Canadians' face. But there is one point that I would like to stress, that when we were removed from British Columbia in 1943 and 1944, at the height of the war, when people in eastern Canada had never met a Japanese Canadian and were influenced by the hysteria of the time against anyone of Japanese origin, at that time when we tried to find a room in Toronto the door would be slammed in our face, but it took us only one day to work shoulder to shoulder with our fellow Canadians in factories to become trusted, for they accepted us as Canadian citizens.

Hon. Mr. KINLEY: What is the religion, generally, of the Japanese in Canada?

Mr. TANAKA: Well, it is a great deal Christian, United Church and so on, Anglican and so on.

Hon. Mr. KINLEY: Are they mostly Christian? Perhaps that was the reason for their emigration to Canada, that they grasped the Christian faith?

Mr. TANAKA: No, I do not think that was the primary reason.

Hon. Mr. BAIRD: The primary reason was a desire to go further afield and make more money and become more prosperous.

Mr. TANAKA: Every immigrant leaves his country thinking that the new land will make his fortune, but they discovered that it was not so wonderful after all, and after they overcame the first shock they got down to business and made a home for themselves.

Hon. Mr. KINLEY: You say they discovered it was not so wonderful after all.

Mr. TANAKA: Yes, sir.

Hon. Mr. KINLEY: I am rather surprised by that statement. I understand the Japanese in British Columbia became very prosperous.

Mr. TANAKA: It took them fifty years to become established, to own their homes and to have enough money to send their children to school, and it was only in 1942 that they were becoming fairly secure.

Hon. Mr. KINLEY: Well, that kind of thing is true of all immigrants, of course.

The CHAIRMAN: Mr. Tanaka, you have made a very admirable presentation.

Mr. TANAKA: May I read the last part of the brief, Mr. Chairman?

Hon. Mr. ROSS: Before you go to that, may I ask you about a point that you have already dealt with in your brief? You speak of the ownership of property by the Japanese. Are they allowed to have land registered in their own name in British Columbia?

Mr. TANAKA: Yes, sir.

Hon. Mr. ROSS: They are allowed now, are they?

Mr. TANAKA: Yes.

Hon. Mr. ROSS: Then what do you mean by the words "restrictions upon the ownership of property by Japanese Canadians," in this brief?

Mr. TANAKA: Their property was arbitrarily disposed of.

Hon. Mr. ROSS: You mean during the war?

Mr. TANAKA: Yes, sir. And at one period after the evacuation they were not permitted to buy property in eastern Canada or the other provinces.

Hon. Mr. ROSS: But that is all cured now?

Mr. TANAKA: Yes, sir.

Hon. Mr. ROSS: So there is not that objection today?

Mr. TANAKA: No.

Hon. Mr. BAIRD: In selling your properties you had to accept very low prices, had you not?

Mr. TANAKA: We had to accept what was given to us.

Hon. Mr. KINLEY: The matter was not lightly dealt with, was it? It was dealt with by a tribunal, was it not?

The CHAIRMAN: It was reviewed after the war, was it not?

Mr. TANAKA: Yes.

The CHAIRMAN: And did the tribunal order the paying of extra compensation where it was deemed necessary?

Mr. TANAKA: A Royal Commission was appointed and I understand it has recently submitted its report to the government, but there has been no indication from the government as to what they are going to do.

The CHAIRMAN: We can assume, I suppose, that any injustice will be righted.

Mr. TANAKA: We hope so.

The CHAIRMAN: We can assume that.

Mr. TANAKA: Yes.

Hon. Mr. ROSS: The Japanese are allowed now to go back to Vancouver, are they?

Mr. TANAKA: Yes. There is no restriction in that way now.

Hon. Mr. GLADSTONE: But many of them in Ontario prefer not to go back?

Mr. TANAKA: That is right. I think there are 7,000 in Ontario, and they are very well pleased where they are.

The CHAIRMAN: So there is a bright side even to that cloud?

Mr. TANAKA: That is so.

Hon. Mr. KINLEY: What is your profession?

Mr. TANAKA: I am a landscape designer, but at the present time I am working full-time as executive secretary of our national organization.

Hon. Mr. KINLEY: Your work as a landscape designer features gardening and adornment?

Mr. TANAKA: Yes. I am a landscape architect.

Hon. Mr. KINLEY: Where did you learn that?

Mr. TANAKA: Well, I learned that in Vancouver, and I have been studying that.

Hon. Mr. KINLEY: You went to the university there?

Mr. TANAKA: No, I did not.

Hon. Mr. KINLEY: You took night school?

Mr. TANAKA: Yes.

The CHAIRMAN: Go ahead, now, will you, with the brief?

Part III

They are Canadian Pioneers

When the federal government ordered the complete removal of the Japanese Canadian minority from the British Columbia coast, it brought to a drastic and disruptive end a half-century's advance toward economic security and success. The story of the struggle of that half-century is an intensely human one, beneath all its political, social and economic ramifications. It cannot, of course, be related here in detail; but it is essentially the parallel history of many other immigrant groups who courageously emigrated from their native land and determined to build for the future as citizens of Canada, with the inevitable sinking of roots deeper and deeper into the Canadian soil.

When the compulsory notice of the federal orders to evacuate were given, the Japanese Canadians, having no alternative, accepted the inevitable in a spirit of co-operation and in a manner as Canadian citizens placed in these circumstances.

Harmful and Undemocratic Measures

With total evacuation taking place, evacuee property was entrusted to the control and management of the Custodian "as a protective measure only". The first sign that the removal had assumed permanent aspects came with the Government order, whereunder "protection only" was abandoned and powers of arbitrary disposition of property by sales were authorized without the consent or, in most cases, the specific knowledge of the owners. Thus the lifetime work and security of these Canadian citizens vanished and their personal property lost, sold, destroyed or stolen.

It is hoped no group of Canadian citizens will again be compelled to undergo similar experiences, or their honour be questioned, as when in one particular the services of Canadian citizens of Japanese ancestry were not accepted in the Canadian armed forces until the early months of 1945.

When the Governor in Council passed three orders-in-council in December, 1945, which provided for the "deportation" to Japan of five different classes of people, including natural born and naturalized Canadian citizens, the orders constituted a grave threat to the security of every minority in Canada, and the actual enforcement of these particular orders would have caused grave injustice and inhumanity to innocent persons.

Although Japanese Canadians have been guilty of no crime against Canada, and have been exonerated by the government of any charge of disloyalty to this country, they were still—a year and a half after the end of hostilities with Japan—subjected to numerous harsh restrictions. They were forbidden to cross provincial boundaries or to change their places of residence without permits from the R.C.M.P. They were excluded from British Columbia so completely that Japanese Canadian students who had received scholarships at the University of British Columbia were prevented from using them. They were largely excluded from certain cities outside of British Columbia.

They were also denied the right to free employment when they were restricted from fishing in British Columbia by federal order-in-council. Canadian veterans of the last war, of Japanese ancestry, were required to obtain R.C.M.P. permits before they could travel to the British Columbia coast.

That legislation enforcing such restrictions as these upon Canadian citizens of Japanese origin is discriminatory, is beyond question.

Canadian citizens of Japanese ancestry were denied, for a great many years, the federal franchise in British Columbia because the Dominion Elections Act accepted automatically any franchise disqualifications based on racial grounds that any provincial legislature imposed; and till April 1, 1949, the British Columbia Elections Act excluded Japanese Canadians.

Conclusion

Canadian citizens of Japanese ancestry are profoundly impressed with the character and extent of public support which they received in the past from Canadian groups and individuals, when discriminatory measures weighed most heavily upon them, and they recognize with appreciation the nature of this deep desire of Canadians to protect the basic human rights which should belong to all citizens irrespective of race or creed.

The Association believes the tremendous educational significance that could be given to a Bill of Human Rights that was part of our Constitution is of the utmost importance; for the effect of such a law would, the Association believes, tend to create social customs in the community which are in harmony with the law, and would constitute a powerful force to foster, in the minds of the people, the conviction that discrimination is wrong by setting standards which are respected by the great majority of citizens.

The Association firmly believes that the United Nations Declaration of Human Rights is a great and wise standard upon which Canada could very well determine a Canadian Bill of Rights.

Respectfully submitted,
National Japanese Canadian Citizens Association
National Executive Secretary
per: GEORGE TANAKA,

APPENDIX "A" *JB*

FEDERAL ORDERS WHICH DISCRIMINATED AGAINST JAPANESE CANADIANS

A. Because they are of Japanese origin, Japanese Canadians were excluded from:

(By Federal Statute)

1. Voting in Federal elections unless they were returned soldiers. (Dominion Elections Act, 1938, Sec. 14, subsec. 2, clause i).

B. Because they are of Japanese origin, Japanese Canadians were removed from their homes in British Columbia and their property liquidated:

(By Federal Orders in Council)

1. To leave designated protected area in British Columbia under conditions of extreme short notice and allowed to take only 150 pounds of hand baggage. (Order in Council, P.C. 1486 of February 24, 1942).
2. While property of Japanese Canadians were entrusted to the care of the Custodian as a "protective measure only" under Order in Council P.C. 1665 of March 11, 1942, said properties were liquidated without the consent of owners under Order in Council P.C. 469 of Jan. 19, 1943.

C. Because they are of Japanese origin, Japanese Canadians were threatened with deportation and exile from Canada:

(By Federal Orders in Council)

1. Persons of Japanese origin, including natural born and naturalized Canadian citizens, were encouraged by the Government (through its agents) to sign forms as an act of co-operation which subsequently were alleged by the Government to be specific requests to be sent to Japan and upon which deportation Orders in Council P.C. 7355, 7356 and 7357 of December 15, 1945 were passed.
(Those who refused to sign were described as unco-operative, and denied privileges accorded to those who did sign.)

D. Because they are of Japanese origin, Japanese Canadians endured discriminatory treatment after the war under the Wartime Measures Act for a period of two and a half years:

(By Federal Orders in Council)

1. They were denied freedom of movement in British Columbia after the war for two and a half years. (Order in Council P.C. 946 of February 5, 1943 as amended by P.C. 270 of January 23, 1947.)
2. They were denied freedom of employment in British Columbia in fishing after the war for two and a half years. (Order in Council P.C. 251 of January 13, 1942 as amended by P.C. 270 of January 23, 1947.)

APPENDIX "B"

B.C. LAWS AND REGULATIONS WHICH DISCRIMINATED AGAINST JAPANESE CANADIANS

Discrimination against Japanese Canadians were made both by direct legislation and by "Regulations" or "Conditions" that refer to, or depend upon, such legislation. The discriminations were sometimes direct and explicit: sometimes indirect and perhaps even accidental. And they originated both in the legislature and in subsidiary boards or societies which the Government has instituted. The following groups indicate the way in which these discriminations applied.

I. Because they are of Japanese origin, Japanese Canadians were excluded from:

A. (By Provincial Statutes)

1. Voting in provincial elections unless they are returned soldiers (R.S.B.C. 1936, Ch. 84, Sec. 5(a), Provincial Elections Act.)
2. Voting in municipal elections, unless they are returned soldiers (Municipal Elections Act, R.S.B.C., 1936, Ch. 83, Secs. 4 and 54(2).)
3. Voting at any Improvement District Elections or having his name on an Improvement District voters' list. (Water Act, R.S.B.C. 1936, Ch. 83, Sec. 216.)
4. Voting for mayor, aldermen, school teachers, members of Parks Board, police commissioner and for by-laws. (City of Vancouver Incorporation Act Consolidation, 1936, Sec. 8(8).)
5. Applying for admission to the Provincial Home (as "Asiatics"). (Provincial Home Act, R.S.B.C. 1936, Ch. 228, Sec. 7.)
6. Being employed underground. (Metalliferous Mines Regulation Act, R.S.B.C. 1936, Ch. 189, Sec. 26(2).)

B. (By Regulations and Conditions)

7. Being employed, directly or indirectly, by any contractor holding a Public Works contract. (Public Works Contract (B.C.) Clause 45.)
8. Being employed by any buyer of crown timber for logging such timber (as "Chinese or Japanese"). (Crown Timber Sales Licences (B.C.).)
9. Japanese Canadians were denied the right to receive the old age pension bonus of ten dollars a month. They received the basic rate of thirty dollars a month only, whereas other residents received full amount of forty dollars.

II. Because they were ineligible to vote in B.C. Provincial elections, Japanese Canadians were excluded from:

A. (By Provincial Statutes)

1. Obtaining hand-loggers' licences. (Forest Act, R.S.B.C. 1936, Ch. 102, Sec. 22 (1) (b).)
2. Learning or practising pharmacy. (Pharmacy Act, R.S.B.C. 1936, Ch. 215, Secs. 14(1), 16.)
3. Serving on juries. (Jury Act, R.S.B.C. 1936, Ch. 154, Sec. 4.)
4. Voting under the Public Libraries Act (including the right to petition for assessment in rural school districts for library purposes; and to petition and vote on by-laws of municipality for establishment of a public library). (Public Libraries Act, R.S.B.C. 1936, Ch. 154, Secs. 2, 19(2), and 22.)
5. Voting for school trustees. (Public School Act, R.S.B.C. 1936, Ch. 263, Sec. 38(1).)
6. Voting on beer plebiscites. (Liquor Control Plebiscites Act, R.S.B.C. 1936, Ch. 161, Sec. 8.)
7. Qualifying for election as mayor, or alderman, or reeve, or councillor of any municipality. (Municipal Act, R.S.B.C. 1936, Ch. 199, Sec. 23(1)).

B. (By Regulations)

8. Learning or practising law. (Law Society of B.C., Rule 39)
9. Transferring as a lawyer from other provinces or Dominions, to practise law in B.C. (Law Society of B.C., Rule 74 (d).)
10. Securing beer licences, as individuals, partners or corporations. (Liquor Control Board Regulation, Rule 28 (1925).)

III. By the use of indirect language, Japanese Canadians, because they are of Japanese origin, were prevented from:

A. (By Provincial Statute)

1. Benefiting by the Women and Girls Protection Act. (Employment of white and Indian women and children in places of business and amusement may be forbidden by the provincial or municipal police. (Womens and Girls Protection Act, R.S.B.C. 1936, Ch. 309.)

B. (By Regulations or Orders)

2. Competing on equal terms for employment in salt herring and salt salmon plants. (Licences are granted only on the condition that one-half of the work, on a time basis, be done by whites or Indians. (Provincial Fisheries, Order in Council.))

IV. Because of the wide discretionary powers granted to certain officials, commissions, departments, etc., the Japanese Canadians, because of their race, may be arbitrarily discriminated against:

1. By the Marketing Board which possesses large powers as to licensing, production and marketing within the province. (Provincial Marketing Act, R.S.B.C., Ch. 165)
2. Under the Forest Act (R.S.B.C. 1936, Ch. 102, Secs. 17(1)(3), and 33(1), Sec. 39.) the Minister is given discretion to refuse any offer at Crown timber auctions: and to impose conditions to renewal of timber leases, respectively.

The CHAIRMAN: Thank you, Mr. Tanaka. We are very glad to have your views on this subject.

Now, the youth groups. Do you wish to appear now?

Miss MARY McCrIMMON: We may have a few more people here, but all the organizations that are going to be represented are here now.

The CHAIRMAN: What do you wish to do? Mr. Ross is here and will give us his brief if you wish to wait a few minutes . . . Come along, Mr. Ross.

Mr. Romaine K. Ross, K.C., LL.M. is a barrister from St. Catharines, and has given, he tells me, a great deal of thought to this subject of the constitutional questions, and so on, connected with human rights; and he has brought a brief from St. Catharines with him. The floor is yours, Mr. Ross.

Mr. ROMAINE K. ROSS: Mr. Chairman and honourable members of the Senate: before I commence the Ottawa presentation of my brief I of course want to take this opportunity of expressing to you my very deep gratitude for your extreme generosity in giving me the opportunity of presenting a brief to your committee on this most important subject. Since I have not sufficient copies of my brief for each member of the committee perhaps it might be helpful to you if I were to very briefly outline the construction of the brief, in order that you may better follow the argument which I present.

The brief first deals with the fact that we are at the present time living in changed and changing times. I believe we are now in the midst of what might be termed a social and economic revolution. The old order undoubtedly is changing in the last two or three decades and has given place to some new order, whatever it may turn out to be. Then the brief goes forward with the suggestion that there has always since very, very early times been what we have termed in law, Mr. Chairman, a natural law. That is, for many, many centuries it has been recognized on the part of thinkers and students and those interested in society generally that the dignity and the worth of man must at all times be recognized and maintained. The brief then deals with the universal declaration of human rights, and proceeds to a short discussion of the Canadian constitution, drawing a brief comparison between the British system of government and the American system of government. I then set out under the heading "Legislative and Executive Action in Canada" a few present and practical examples of what might be termed arbitrary legislative and executive action, in order that our minds might be brought to bear on something practical, to the end that the argument perhaps might be the better appreciated.

Then the brief closes with a few recommendations: the recommendation that we in Canada today require a Bill of Rights, and that that Bill of Rights should be written into and should form a part of the written Constitution of our nation, and that the British North America Act should be amended to bring this about. The recommendation is then made that the federal government, at as early a time as possible, should revise all the existing federal laws that affect human rights and fundamental freedoms. The brief suggests, too, that this most important topic should not be dropped but that the deliberations of the joint committee of the Senate and the House of Commons and this committee, sir, should be carried on to the end that perhaps the parliament of Canada might see fit even to set up an additional standing committee to deal with this particular subject from time to time, to keep it before the public as its importance might indicate it should be so kept.

The brief suggests also that the government, as soon as possible, should actually endorse the principles enunciated in the Universal Declaration of Human Rights, as an act of good faith, and to indicate to the public generally and to the world at large that Canada does, through its parliament, agree with these principles. The brief finally closes with the suggestion that the parliament of Canada should at the earliest possible time seek a federal-provincial conference to deal with this important matter.

The CHAIRMAN: You are going to read it, are you not, Mr. Ross?

Mr. Ross: Yes. With these brief remarks I should like now, if I may, to proceed with the presentation of the brief.

Hon. Mr. GLADSTONE: Mr. Ross, are you presenting your own views or those of an organization?

Mr. Ross: Mr. Senator, I might say that I am appearing strictly as a private citizen interested in this particular subject, and for that reason I am particularly grateful for the opportunity of appearing here.

To the Senate Committee on Human Rights and Fundamental Freedoms:

Gentlemen: The subject of human rights and fundamental freedoms is one of commanding interest and importance, and I wish at the very beginning of this brief to congratulate the members of the Senate of Canada for the real concern they have shown in the welfare of the Canadian people by setting up a committee of inquiry into the preservation of their civil liberties. I wish also to congratulate your Chairman, Senator A. W. Roebuck, K.C., upon the leadership he is giving in this matter, and to thank him and you very sincerely for the privilege you have given me of submitting a few observations, references and recommendations within your terms of reference.

A Period of Change

There can be no doubt but that we are living in an era of great change, and that the students of history one hundred years from now will pursue their studies through the industrial revolution of the nineteenth century to the social and economic revolution of the twentieth century.

In every period of unusual change, one predominating factor stands out, and present trends offer no exception. The social development of this century has been featured by the progressive levelling out of society in all democratic countries. Today the common man, the ordinary person, the average citizen has truly come into his own. He has fought and won two world wars. He has worked for and established the principle of equality of education. He has won an equal place with management in industry. He has altered the policies of old political parties and created new ones. He has learned his great strength and has become fully conscious of his rights.

The rank and file of the people, as well as many of their leaders of all shades of political thought, have spoken decisively, not only in Canada and the United States of America, but in England and other democratic countries as well. They are insisting on being heard. They are insisting on the recognition of their natural rights. They are entitled to them. The government of Canada, and the governments of all the provinces of Canada, would do well then to recognize the necessity of a legal and enforceable declaration of the rights of man. Such a declaration should become and form a part of the written constitution of Canada, and the British North America Act should be amended to provide a Bill of Rights for the Canadian people. The ordinary citizen, having won recognition of his rights, is going to ask to have them guaranteed.

Natural law

If we are to draft a Bill of Rights for Canada, we must of course first look for a foundation upon which such a constitutional provision can be constructed. It would be well to find some precedent, if possible, for the step we now would take, for it is the past which lights the lamp to guide us along the pathway to the future.

We know that our whole democratic system of government is based upon the great legal principles handed down to us by the common law of England. We know too that these great principles are based upon the concept of natural law, and upon the principle of human rights and fundamental liberties. The principle of a natural law—of human rights—was expounded in early times by

such great thinkers as Sophocles, Plato, Aristotle, Cicero, Justinian, Aquinas, Locke and Blackstone. It was Blackstone who so greatly influenced Abraham Lincoln in his thinking. It is the philosophy of Locke which so profoundly affected Thomas Jefferson and those with him who shaped the great Declaration of Independence of the American Colonies. It is helpful to recall and recapture the thoughts expressed by some of these early writers.

About 450 B.C. Sophocles' great drama, *Antigone*, portrays a young girl standing alone before Creon, the tyrant of Thebes. When Creon asked Antigone if she dared transgress his decree, she answered:

Yea!—for not Zeus, I ween, proclaimed this thing;
Nor Justice, co-mate with the Nether Gods,
Not she ordained men such unnatural laws!
Nor deemed I that thine edict had such force
That thou, who are but mortal, couldst o'erride
The unwritten and unswerving laws of Heaven,
Not of today and yesterday are they,
But from everlasting. . . .

Since Sophocles gave this philosophy the imperishable beauty of his dramatic writing, it has found expression, in one form or another, down through the years.

Cicero, in his *De Legibus*, describes natural law in this way:

Of all these things respecting which learned men dispute there is none more important than clearly to understand that we are born for justice, and that right is founded not in opinion but in nature. There is indeed a true law, right reason, agreeing with nature and diffused among all, unchanging, everlasting. . . .

Blackstone, in his *Commentaries*, writes:

Man, considered as a creature, must necessarily be subject to the laws of his Creator. . . . This law of nature, being co-eval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

And then we have the immortal words of The American Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

International Declaration of Human Rights

It is interesting and exceedingly hopeful to observe that men are still thinking in terms of natural law, of human rights and fundamental liberties. A new movement in this direction has arisen out of the world war just ended.

In May of 1948, the United Nations' Commission on Human Rights drafted a Universal Declaration of Human Rights. The General Assembly of the United Nations adopted this Declaration on December the tenth, 1948. The Commission has now drafted a Covenant on Human Rights for consideration by the General Assembly in its fifth session in the fall of this year.

The Universal Declaration of Human Rights restates the eternal principles upon which our whole social order is based. It again sets out the rules by which human conduct should be guided. It indicates the trend of present day thinking.

It recognizes the continued acceptance of the law of nature. It acknowledges that certain inalienable rights do exist as fundamental human liberties. What, then, is Canada's position since this Universal Declaration of Human Rights has been approved by the United Nations of which Canada is an important member? We will be expected to practise what we preach and, to that end, to enact a national Bill of Rights. But aside from international action, we need a Bill of Rights for the protection and preservation of the civil liberties of the Canadian people. An examination of our constitution as it affects human rights and fundamental freedoms at the present time, discloses no such protection.

The Canadian Constitution:

Perhaps a clearer understanding of our own Constitution can be had if we first examine the main features of the Constitution of the United States of America in so far as human rights are concerned.

On the fourth day of July, 1776, the original thirteen colonies published their Declaration of Independence by which they broke their colonial allegiance to Great Britain. In 1787, the Constitution was approved in its final form and it came into effect at the first meeting of Congress in New York city in 1789.

The ten original amendments to the Constitution were passed on the fifteenth day of December, 1791, and they have come to be known as the American Bill of Rights. The First Amendment, which is Article I of the Bill of Rights, states that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The principles contained in the First Amendment were extended by the Fourteenth Amendment, passed on the twenty-eighth day of July, 1868, which provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of Canada contains no such provisions as those to be found in the American Bill of Rights. Our property and civil rights, our natural rights are secured to us for the most part by the common law of England. It is to unwritten law that we mostly look for the protection of our person, our property and our reputation. As between citizen and citizen we are no doubt adequately protected under the law, but as between the citizen and the State our rights are not sufficiently safeguarded. Perhaps a brief comparison between the American and the British systems of government would here be helpful.

The British Constitution establishes a legislative, executive and judicial branch of government. The judicial branch (the courts) is completely independent, but has no authority over the other two branches except, as in Canada, where a federal system of government obtains, the courts may determine constitutional disputes arising between the federal government and a provincial government. Within their proper sphere of legislative jurisdiction, and within certain limitations set out in the British North America Act, the parliament of Canada and the legislatures of the Canadian provinces exercise supreme authority. The Courts are powerless against them and no rights whatsoever are reserved to the people.

The American (to use a convenient term) system of government is not like the British system. The American Constitution, like the British, provides for three branches of government—the legislative, the executive and the judicial. But each has certain definite powers and the courts are given authority to determine whether the other two branches are exercising their authority constitutionally. In addition to the powers given to the three branches of government, a certain residue of power is reserved to the people. On the rights reserved to the individual citizen, no branch of government may trespass, and the courts determine the rights of the citizen as against the State. If Congress or a State of the Union abridges the right of any citizen, that citizen may seek redress for his grievance before the highest court in the nation. The Canadian citizen enjoys no such constitutional guarantee. If parliament or legislature abuses its supreme authority, the only remedy is an appeal to the people in an election. There is no right in the citizen to petition the court for redress. The citizen is therefore in a hopeless position. He feels himself aggrieved but is unable to do anything about it. It would be impossible for him to have his particular grievance made the issue in an election campaign. Surely his rights should be guaranteed to him so that he would have a right of action in the courts against an unwise parliament or an arbitrary executive, or against illegal interference, from any source, with his person or his property. Certain municipal action is subject to review by a judicial tribunal. In proper cases, the action of parliament, or of the executive, should also be subject to judicial review.

Legislative and Executive Action in Canada

I shall not attempt to enumerate here the rather large number of violations in Canada of the rights of the individual citizen. Whether or not such violations exist, the principle of a written constitutional guarantee of those rights is either good or bad. For practical purposes, however, a few examples of this type of legislative and executive action might be helpful.

Perhaps the example *par excellence* of arbitrary executive action, coupled with questionable and dangerous legislation, was the detention and trial under the War Measures Act of several Canadians suspected of carrying on espionage activities for the government of Russia, a foreign power. These people were taken into custody by Order in Council of the federal government, held for many weeks merely as suspects and without benefit of counsel, and presumed and treated as guilty until a trial would prove them innocent. Many of them were later proven innocent, and the government's only excuse for its conduct was that the proceedings were necessary to the safety of the state.

The so-called Padlock Law of the province of Quebec permits a citizen's premises to be closed by an administrative official upon suspicion of propagating communism. Such a citizen is deprived of his property without due process of law. The government of the province of Quebec has also delegated authority to the provincial board of film censors to censor publications for the purpose of discovering and preventing the publication of obscene and immoral literature. The purpose which the legislation is designed to achieve is of course quite unobjectionable, but the method of achieving it offends against the fundamental principles of true democracy. Judicial decisions are properly the function of courts of law rather than administrative tribunals although, where an appeal to the courts is provided, judicial and quasi-judicial authority can be delegated to boards, commissions, ministers of the crown and other individuals without constitutional offence.

The wisdom and fairness of certain provisions of Ontario's Industrial Standards Act are also open to question when considering the inherent rights of the citizen. Under this Act a certain percentage of service station operators may agree to close their places of business at certain times and force an unwilling

minority also to close. The proprietors of barber shops may take the same action. Recently a barber in a small Ontario city was haled into court, convicted and fined for cutting hair on Wednesday and he is powerless even to try to defend himself. Under our present law, he is unable to test the right of the Ontario legislature to abridge his natural rights in this regard—his supposedly inalienable right to work as long as he wishes and to enjoy the full fruits of his labour.

Hon. Mr. KINLEY: I suppose that his union is a factor in that, too, is it not? The union that he belongs to is a factor in him not cutting hair on Wednesdays.

Mr. Ross: Yes.

Hon. Mr. KINLEY: That, probably, is where the innovation starts?

Mr. Ross: Yes. The legislature has given the municipalities power to enact a bylaw if a certain percentage of barbers go to them and say "We want it".

Hon. Mr. KINLEY: So the restriction originates with the citizens in the first place?

Mr. Ross: Yes. If the majority want it they can have it, even though some young ambitious barber wants to work longer hours. But the principle behind it is that, at least, if he thinks himself aggrieved he should have the right to take his troubles to court.

The CHAIRMAN: Why has he not the right to go to court?

Mr. Ross: Not to test the validity of the legislation.

The CHAIRMAN: Oh, yes, he has.

Hon. Mr. Ross: Why not?

The CHAIRMAN: It has been done several times. I wrote the bill myself and put it on the statute books of the province of Ontario, but I did not put this particular provision in the Act. That was originated by Dave Croll, who succeeded me as Minister of Labour in Ontario. I did not write this in, but the Act itself is my Act, and I am pretty familiar with it.

Mr. Ross: Yes, indeed.

The CHAIRMAN: And I know that its constitutionality has been tested in the courts on several occasions and it has come down here to the Supreme Court of Canada. The Ontario Boys' Wear case was one that came to the Supreme Court of Canada, and the Act was upheld as constitutional.

Mr. Ross: Was it not, senator, the constitutionality of the by-law? That is, was there not action taken under the by-law to quash the conviction, perhaps and it was held—

The CHAIRMAN: Anyway, it got to the courts.

Mr. Ross: Yes, but there was no method of testing the legislation under the constitutional aspect to determine whether or not a citizen's natural rights should be abridged by saying he cannot cut hair on Wednesday, Thursday or Saturday. In other words if it were carried too far it might, to use an extravagant example, provide that hair can only be cut on Saturdays.

The CHAIRMAN: There is no provision in our constitution such as there is in that of the United States by which the right of the individual may be gauged in a court of law.

Mr. Ross: Yes. That is the point I desire to make.

Hon. Mr. GLADSTONE: Would that be all day Wednesday, or Wednesday afternoon, due to a city closing by-law?

Mr. Ross: It is all day Wednesday. It used to be just Wednesday afternoon, and then they enlarged it to all day Wednesday. That is why I feel it

might possibly be enlarged to take in Thursday or Friday or any number of days.

Hon. Mr. BAIRD: It is the principle you are concerned with?

Mr. Ross: It is just the principle I am arguing, that there is no constitutional guarantee of the right of a man to cut hair if he wants to.

Hon. Mr. KINLEY: The individual has no right against a statute?

Mr. Ross: Yes,—no right against the state.

Even the magistrate in this particular case is reported to have suggested that the law seemed unfair. At least a citizen under such circumstances should have the constitutional right to determine the validity of this legislation by an appeal to the Supreme Court of Canada.

The treatment of Jehovah's Witnesses in the province of Quebec is another example of the urgent necessity of a constitutional guarantee of human rights and fundamental liberties. There is also a recent tendency in Canada on the part of municipal authorities to use building restriction by-laws as a method of effectively discriminating among religious groups by preventing certain places of worship to be erected in certain areas. In cases such as this, an aggrieved congregation should be able to invoke the aid of our Constitution.

Many other examples of dangerous legislative and executive action in Canada could be given. The trend which they indicate is definite and is common to all provinces as well as to federal action. The necessity now is to check such tendencies before they are carried too far.

A Bill of Rights for Canada

From an examination of the available learned expressions of opinion on the subject, and from the evidence before us of at least a number of legislative enactments in Canada which have opened the door to a violation of the rights of the citizen, the need for a constitutional guarantee of the fundamental liberties of the Canadian people seems readily apparent. I believe that such a need exists, and that its recognition can best be accomplished by writing into the British North America Act a Bill of Rights setting out the traditional fundamental freedoms to which all Canadian citizens are entitled. Such a Bill of Rights, in limiting the sovereignty of parliament and of the provincial legislatures, would not be introducing any new principle, or changing the basic nature of our constitution. The sections of the British North America Act dealing with official languages, education and other entrenched matters, have already placed specific limitations upon that sovereignty.

It is also to be observed that an amendment to the constitution is preferable to the enactment of a Bill of Rights by a separate federal statute. Such a statute could be repealed, while a Bill of Rights forming part of the Constitution could only be amended by the federal government with the consent of all the provinces.

The CHAIRMAN: Why not go to the people, the way they do in the States? You cannot change a provision of the Bill of Rights of the United States without reference to the people.

Mr. Ross: No; either by direct reference, as I understand it, or by a vote of three-quarters—

Hon. Mr. KINLEY: Seventy-five per cent of the States have got to vote for it.

Mr. Ross: There are the two methods.

In addition to a Bill of Rights, it would be a progressive step, and one in line with Canada's obligations as a member of the United Nations, for the federal government to undertake as soon as possible the revision of all federal statutes affecting fundamental freedoms. Such a revision would, of course,

provide for new law as well as a restatement of the old, and would give effect to those social and economic rights which are not properly the subject matter of constitutional treatment.

The federal government should also endorse at the earliest possible time the Universal Declaration of Human Rights. It would be an act of good faith, and would clearly indicate to the Canadian people, to the other member states of the United Nations, and to the world at large that Canada is officially committed to the principles which the Declaration enunciates.

In view of the great importance of the subject we are here discussing, it would seem, of course, imperative that the work which this Committee and which the present Joint Committee of the Senate and House of Commons has so admirably undertaken should not be discontinued. The government might well consider setting up an additional standing committee of parliament in order to assure the Canadian people that their traditional fundamental freedoms might be preserved and, if possible, extended.

It is not my purpose to deal here with the constitutional problems which will require solution before a Bill of Rights for Canada can become an accomplished fact, nor is it my purpose to suggest the phraseology of such a document. I would only urge that everything be done to bring the subject matter of this reference before a conference of the federal and provincial governments at the earliest possible time. The need is definite. The remedy seems clear. The difficulties, constitutional and otherwise, will be overcome if those representing competing jurisdictions will work together with patience, tolerance and sincerity of purpose for the welfare of all Canadians and the benefit of all mankind.

Thank you very much.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: A very splendid statement.

Hon. Mr. KINLEY: Mr. Chairman, it is a very splendid contribution. However, what occurred to me, Mr. Ross, as you went through it is that it is critical. You do not tell us much. You compare us with the United States. We must have some advantages over their form of government, but you do not say anything on that; you are critical all through. As I say, it is a splendid brief but a person who read it alone might be left in a state of mind where he would say "We are in a poor situation indeed". I do not think things are quite as bad as that.

Mr. Ross: Mr. Senator, may I say that I believe the brief points out, when it leads up to a comparison of the two systems, the British and American systems of government,—the wording of the brief, if I recall it correctly, is "as it affects human rights and fundamental liberties." That is the only comparison I have attempted to make; and I do feel that, on a strict comparison on this particular subject, the American system is an improvement over ours. But in all other ways I am one of those Canadians who feel that the system which operates in Canada, that is the overall parliamentary and governmental system, is away and beyond anything which any other country has as to governing the society within its jurisdiction. I think the British system is much preferable, senators, to the American in almost every way except I do feel that in the matter of human liberties our Constitution or our system is lacking. I would hope some time in the not too distant future to see our Constitution remedied in this respect only.

Hon. Mr. KINLEY: Right. But you will admit that the Canadian system is more susceptible to public opinion than the American system?

Mr. Ross: Yes, I do.

Hon. Mr. KINLEY: The judges of the United States and the executive of the United States, who invoke the laws and really rule the country, are appointed by the President and are not elected at all.

Mr. Ross: Yes, and they do not even sit in Congress and yet are subject to checking up by the members of Congress.

Hon. Mr. KINLEY: Going through a lifetime of experience in public service I have found many lawyers throughout the country who have in their minds that the abolition of the jury system—the grand and petty jury—would be a good thing.

The CHAIRMAN: Oh, my, do not blame the lawyers for that.

Hon. Mr. KINLEY: I experienced that some years ago in Nova Scotia when therethere was a bill presented to abolish the Grand Jury. I hope that that feeling is not prevalent in this country today—that the abolition of the jury system would be a good thing.

Mr. Ross: So far as my observations are concerned I would say that the idea is not at all prevalent among the members of the Bar, nor indeed among members of the Bench. I believe your Chairman, the Honourable Senator Roebuck, will agree with me in that statement. Personally, however, I feel that one particular function of the Grand Jury might without danger or harm to society be discontinued. I refer to the present practice of the Grand Jury, which sits in our various counties in Ontario, to inspect public buildings. I do not know if this is the system in other provinces but I think it might be a worn-out function, since there are other methods employed now in seeing that public buildings are maintained in proper order.

Hon. Mr. KINLEY: Do you think that the jury system might be imperilled by not putting in the proposed Bill of Rights something to the effect that every person shall have the right to trial by jury?

Mr. Ross: By his peers?

Hon. Mr. KINLEY: Yes.

Mr. Ross: Yes. I do not see any objection to that provision at all. In fact, I think it might be a worthwhile suggestion. I would certainly be in favour of it.

Hon. Mr. KINLEY: It is a feature of the Magna Charta, is it not Mr. Chairman?

The CHAIRMAN: "Trial by his peers" is the way it is expressed in the Magna Charta.

Mr. Ross: That is the old language.

The CHAIRMAN: And that was purely as between the King and the commoners, and was really for the protection of the nobility. They were not to be tried by those under them.

Hon. Mr. KINLEY: I recall that when I was a member of the Nova Scotia legislature the Attorney-General introduced a bill to abolish the Grand Jury.

The CHAIRMAN: You were opposed to it?

Hon. Mr. KINLEY: Yes.

Hon. Mr. Ross: Mr. Ross, you spoke of Aristotle and Justinian and Blackstone and others. I am particularly familiar with Blackstone and his writings. I do not think any of those men would want to be tied down by a written Constitution. They all were most enthusiastic over the natural unwritten law rather than a law which would develop and keep pace with changing conditions from time to time. I certainly think that Blackstone would not favour the American Constitution as compared with the English Constitution, because he was most enthusiastic in praising the English Constitution, which is an unwritten Constitution. The American Constitution is tied down by a number of limitations of various kinds.

Mr. Ross: It might be difficult to conjecture or surmise just what some of those early writers may have felt with respect to actual written guarantees of their human rights and fundamental freedoms. We have, of course, Mr. Chairman, concrete evidence of certain written constitutional documents in the early history of English law. The Magna Charta, which has been mentioned, is one. And of course the Bill of Rights is another, and there was a Declaration of Rights, and I think the Act of Settlement around 1701 mentioned something about human rights. So there are some examples at least of attempts to write guarantees into the English system.

Hon. Mr. Ross: Yes. They are in the form of statutes which can be varied from time to time to meet changing conditions, but not in the form of a Constitution such as they have in the United States and which cannot be varied except with considerable difficulty.

Hon. Mr. KINLEY: This gentleman has given considerable thought to the subject. I should like to ask him a practical question. Canada is now in the throes of amending her Constitution, and this is going to be a very difficult job. They are doing this with the idea of doing one thing at a time. Do you not think, therefore, that it might not bog down the whole thing if we place this added burden on our provinces in trying to iron out our Constitution?

Mr. Ross: I do not think it should form the subject matter of discussion in the forthcoming dominion-provincial conference.

Hon. Mr. KINLEY: At some appropriate time, I suppose?

Mr. Ross: Yes, but as early as it is conveniently possible it should be made perhaps the subject matter of a special session between the dominion and provincial authorities.

Hon. Mr. KINLEY: You speak of it being written into the Constitution. What would you say about the federal law of stability? That is to say, that kind of federal law by which the auditor is appointed, and by which 75 per cent of parliament must agree before he can be dismissed from office. If you had a law and there was a provision that it could only be changed by a vote of 75 per cent of both houses of parliament—

The CHAIRMAN: I think you are misinterpreting that particular statute. That says that the auditor can be discharged only on a two-thirds vote, but the act can be repealed by a majority in parliament.

Hon. Mr. KINLEY: That is what I wanted to bring out, that a majority in parliament could repeal the act.

The CHAIRMAN: Gentlemen, we must pass on. We have another wonderful delegation to hear from now, the Co-ordinating Committee of Canadian Youth Groups. It is headed by Miss Mary McCrimmon and Mr. Ben Nobleman, and I see that they have a good many supporters with them. Will you come forward, Miss McCrimmon and Mr. Nobleman, and bring with you whom you like.

Miss MCCRIMMON: Mr. Chairman, may I introduce the members of our delegation?

The CHAIRMAN: Please do so.

Miss MCCRIMMON: This is Mr. Ben Nobleman, of the Canadian Jewish Youth Council. Here are five people from the Ottawa Branch of the Young Men's Christian Association; Mr. James Beckett, Miss Betty Pritchard, Miss Lois Wright, Mr. Kurt Orlick and Mr. Clifford Thompson. And this is Mr. James Campbell, from the United Church Young People's Union.

Our organization includes a majority of the Canadian youth groups which are organized on a national level. I will read the list of our member organizations: The Young Men's Christian Association, the Young Women's Christian Association, the Student Christian Movement, of which I am the representative here today, the United Church Young People's Union, the Canadian Jewish

Youth Council, the Young Men's Hebrew Association, the National Federation of Labour Youth, the Canadian South Slavic Youth Federation.

Associate members are: The Junior Farmers of Ontario and the Canadian Branch of the Unitarian Youth.

Observing groups are: The Canadian Federation of Catholic College Students, the Japanese Canadian Citizens' Association, whose secretary, Mr. Tanaka, spoke here this morning, and the Co-operative Commonwealth Movement.

Now I come to our brief. I shall read the first three pages of the brief, which set out our views on how human rights may be preserved in Canada, and Mr. Nobleman will read the last five pages, in which we give examples of things that have happened in Canada and which we believe should have been prevented. You have already heard about a number of these in this committee.

Mr. Chairman and members of the Senate:

We would express our appreciation for this opportunity to present to you the views of the Co-ordinating Committee of Canadian Youth Groups on the subject of human rights in Canada.

The preservation of human rights and fundamental freedoms in Canada is of special concern to us as a committee made up of young people and of the representatives of youth organizations. All the members of our Committee, and the great majority of young people with whom we have been in contact on the subject of civil liberties, have shown a very keen interest in any steps that may be taken to improve the observance of human rights in Canada, especially as affecting racial and religious minorities.

Young people respond to the ideals of equality and brotherhood which are taught them in our schools, churches, and youth organizations, and are greatly disturbed when they come in contact with some of the practices of our society which contradict these ideals, and which impose special hardships on some of their number who happen to belong to 'minority groups'. It is young people who suffer most from these discriminatory practices which, at a time when they are just beginning to take up their responsibilities as citizens, subject them to humiliations and limitations of opportunity.

Another tragic aspect of this situation is its effect upon those who are not members of any group which is discriminated against, who, as they enter into the adult world, often accommodate to its prejudices and dull their consciences to its faults. In the field of civil liberties one often meets the remark, "Of course, that is the idealistic thing, but you surely don't mean it in a practical way!" This rift between ideals and actions is morally very destructive both for individuals and society.

Finally, young people entering upon citizenship need to be given a strong sense of the dependability of our democratic institutions and processes. We know that Canada has a very good record in this respect. However, there have been some regional failures to live up to the democratic standard. We can say from experience that young people from these regions show a much greater tendency to doubt the possibilities of democratic action, and a greater susceptibility to marxist criticism and cynicism about democratic institutions, than comparable groups of young people from other parts of Canada.

- i. Human rights and how they may be preserved in Canada, with additional remarks on the importance of taking steps to preserve them at the present time.

Man, as a creature of God, endowed with a personal dignity, has certain natural and inalienable rights. Among these is the right to the equal protection of just laws, regardless of sex, nationality, colour or creed.

The Constitution of Canada, of which the B.N.A. Act is the principal written part, guarantees the existence of parliamentary institutions and certain other rights. It therefore implies, but nowhere sets forth as binding, such fundamental human rights and freedoms as the right to life, liberty, and security of person, freedom of speech, religion, assembly, press and association, the right to the franchise and public office, protection against arbitrary arrest, detention, exile, deprivation of property, or cruel, inhuman or degrading treatment or punishment, the right to a fair trial with assistance of counsel, and the other political, judicial, and personal rights mentioned in the first twenty-one articles of the United Nations Declaration of Human Rights. Our Constitution implies these rights. For, if any citizen can be arbitrarily deprived of any of them, the existence of free parliamentary institutions is not secure.

There is now a need for the explicit affirmation of these human rights and freedoms in the Constitution of Canada. Such an affirmation would serve to educate all Canadians, new and old, in the moral and political principles of our society, drawing forth their idealism and reassuring them of the worth of the human person. It would also provide an unambiguous basis for the protection by the Courts of these human rights and freedoms, whenever they are transgressed by private citizens or governmental bodies. Some cases have indicted that such a basis does not adequately exist at present in some respects.

Canada has subscribed to the principles of the United Nations Charter and to the United Nations Declaration of Human Rights and Fundamental Freedoms. The latter is described as "a common standard of achievement for all peoples and all nations". We have a moral obligation to live up to this standard as well as possible. A look at recent history and at the present world situation will show us, on the one hand, how easily human rights and freedoms can be lost in times of insecurity and tension, and, on the other hand, how important it is that Canada exemplify before the world our best ideals of free democratic processes, justice, and equal respect for people of all races.

A great deal of idealism has gone into the creation of our type of liberal democracy, and our democracy could not exist without it. But we cannot take this idealism for granted, hoping it will gradually grow in influence and clear up all abuses. It needs to be strengthened and encouraged if it is to survive under modern conditions, conditions in which a man finds himself a small part of a huge system of organizations on which he has little influence, a system which subjects him to all kinds of pressures making for standardization, passive acceptance, and what some have called "dehumanization". The present situation cannot be static. Either we must find some way of instilling into our new, highly organized type of society, a very strong emphasis on persons and human values and human freedom, or else we must expect a very different way of life in the future.

The present movement for a declaration of human rights and freedoms, both in Canada and in the United Nations, is a hopeful sign of the vitality of the idealism to which we have referred. In Canada probably the greatest single step that can be taken toward strengthening this idealism and making it an increasing influence throughout our national life, is by establishing a Canadian bill of rights as part of our constitution. Of course, incorporation in a written constitution by no means ensures respect for human rights. Still, with this, plus an enlightened public opinion, a really democratic system, and constant vigilance, we can translate what might otherwise be merely fine phrases, into realities.

In the second and third sections of this Brief we shall submit examples illustrating the need for a bill of rights in Canada. In the second section we shall give examples of actions by governments or governmental agencies. It is in this area that a bill of rights would apply most directly. In the third section we shall give examples of types of racial and religious discrimination which have tended to attach themselves to our patterns of social life. Here a bill of

rights would not so often have direct application. Nevertheless it would have a general influence in this area also. Moreover, a bill of rights, and legislation in general, would have an educative effect which would gradually influence conduct and attitudes which are outside the realm of legislation altogether.

In recommending a bill of rights, we would urge that the proposed bill of rights include a clause to the effect that: "Everyone shall have the right to freedom from discrimination because of race, colour, religion, or national origin, in employment, education, and use of public places." Or, it might be established that discrimination in these ways against a person is a form of degrading treatment, and therefore a violation of human rights.

We would urge also that legislation be passed making void all racial restrictive covenants on property, so that, when such cases come before the Supreme Court of Canada, these covenants would not be upheld. We believe that the Supreme Court in the U.S.A. performs a similar role.

Finally, we would join with the Association for Civil Liberties in recommending the following four steps in addition to the establishment of a bill of rights:

1. Extending the jurisdiction of the Supreme Court of Canada so that it can deal with many cases involving civil liberties which cannot now come before it.
2. Establishing a Federal Fair Employment Practices Act which would seek to put an end to discriminatory and unfair employment practices in federal industries.
3. Establishing a Civil Rights division as a branch of the Department of Justice, whose function it would be to investigate complaints and seek to protect the fundamental human rights of people in Canada.
4. Giving special consideration, when the Criminal Code is revised, to defining and listing the specific rights which the citizens and an accused person may lay claim to under our criminal law.

Would you like me to pause here, so that you can ask questions of various young people who are here?

The CHAIRMAN: Oh, I think you had better go on with the reading, so as not to break the continuity.

(Miss McCrimmon handed the remainder of the brief to Mr. Ben Nobleman.)

Mr. Ben NOBLEMAN: Mr. Chairman and gentlemen, I might just add that it is indeed a great privilege to appear before this committee. This is the second part of our brief.

ii. Cases illustrating the need for a Canadian Bill of Rights.

- (a) United Nations Declaration of Human Rights, article 21: Everyone has the right to take part in the government of his country

The majority of North American Indians in Canada do not possess the full rights of citizens, including the franchise. It is only in the last two years that Canadians of Asiatic origin in the Province of British Columbia have been enfranchised.

- (b) U.N. Declaration, article 16: The family is entitled to protection by society and the state.

While other immigrants to Canada are allowed to bring their wives and children of any age as soon as they have taken up residence here, Asiatics must first become citizens before they may bring their wives and children under the age of eighteen. From the year 1923 to 1947 Chinese in Canada were not permitted to bring in their families even after becoming citizens.

- (c) U.N. Declaration, articles 9, 13, and 17: No one shall be subjected to arbitrary arrest, detention, or exile Everyone has the right to freedom of movement and residence within the borders of each state. . . .

No one shall be arbitrarily deprived of his property.

When Japan entered the war, thousands of Canadian citizens charged with no crime were torn from their homes on the West coast, their property was confiscated, and themselves transported to camps in the interior. Not until 1949 were these Japanese-Canadians permitted to return to British Columbia, and only in 1950 is compensation being granted for their almost total loss of property.

- (d) U.N. Declaration, article 15: No one shall be arbitrarily deprived of his nationality

Under the powers conferred by the War Measures Act, Cabinet in December 1945, some months after the end of war and without reference to Parliament, passed three orders-in-council which, had they been enforced, would have exiled to Japan over 10,000 persons, a majority of whom were Canadian citizens. When these orders-in-council were referred to the Supreme Court, two of the judges ruled that Canadian-born or naturalized citizens could not be deported in this way; but the majority held that there existed no legal barrier to this action.

Some of the Japanese-Canadians who accompanied their parents to Japan, being minors at the time, have asked to be re-admitted, but at present are considered non-admissible to Canada by the Canadian Government, having been deprived of their citizenship.

- (e) U.N. Declaration, article 23: Everyone has the right to the free choice of employment

Until last year the Province of British Columbia had a number of laws excluding all or some Asiatics from certain types of employment, such as being employed, directly or indirectly, by any contractor holding a public works contract, or by any buyer of crown timber for logging such timber. There were restrictions also against obtaining hand-loggers' licences, and against learning or practising pharmacy.

- (f) U.N. Declaration, article 11: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in public trial, at which he has had all guarantees necessary for his defence.

During the spy trials, by the order-in-council which was passed on October 6, 1945, persons were seized, denied bail or counsel, held incommunicado and interrogated by Commissioners before a single charge was laid. They were denied the right not to incriminate themselves, and, before a Court trial was held, their guilt was publicized by findings of a Royal Commission.

Two cases which took place in Ontario during 1948, that of William Stuart of Galt, and that of William Brazeau of Cornwall, illustrate the way in which ordinary judicial procedures may be neglected. The former person was held for three weeks without bail or counsel; on one occasion he was questioned for seventeen consecutive hours by the police; and only after six weeks was he granted reasonable bail. The latter spent one month in jail awaiting trial and five months awaiting his appeal, on a charge for which the maximum penalty was six months. An example of indirect pressure affecting judicial procedure is the cancellation of the liquor licence of a Montreal restaurant proprietor who had posted bail for certain members of the Jehovah's Witnesses sect.

- (g) U.N. Declaration, article 18: Everyone has the right to freedom of thought, conscience and religion. This includes the freedom to manifest his religion or belief in teaching, practice, worship and observance.

The Jehovah's Witnesses, and also certain other minority religious groups, have been subjected in some parts of Canada to many legal restrictions designed to prevent them from openly manifesting their beliefs.

Hon. Mr. ROSS: I do not think that it was for manifesting their beliefs that they were punished in Quebec, it was for abusing the other fellow's religion; and their conduct in Quebec was very, very bad. I do not think it was as you have stated it here.

Mr. NOBLEMAN: Well, I stand to correction. I believe they were prevented from distributing their literature and from participating in other activities.

Hon. Mr. ROSS: Yes, but the literature was of a most abusive nature, a very bad kind.

Miss McCRIMMON: It may be that if they had phrased their literature in a different tone they might have "got by" with it. That did not arise, so we cannot say.

Hon. Mr. ROSS: It is all right for a person to praise or uphold his own religious belief, but he might leave the other fellow alone. It is not good Christian practice to go and abuse the religious practices of others, as has been done in the province of Quebec. I think they went pretty far there.

Hon. Mr. PETTEN: I have listened to a good many of the briefs that have been presented about the Jehovah Witnesses, particularly as to the province of Quebec, and in no case have I heard any real evidence given to show that these cases have been thoroughly investigated.

The CHAIRMAN: You are quite right, Senator Petten. As I said yesterday, we are not in a position to review individual cases or attempt to be a court to give judgment in these matters.

Hon. Mr. PETTEN: I should like to make myself clear on this point. I hold no brief for the province of Quebec, which has been ably represented here all through our meetings, but I do not like to see or hear or feel that some province is being, shall we say, brought up on the carpet without absolute evidence being given.

The CHAIRMAN: Or without hearing both sides.

Hon. Mr. PETTEN: Yes. The people who present these briefs are probably acting in good faith, but perhaps they might investigate a little more closely before they attempt to present these arguments to the world at large. They are just giving one side of the matter. I have not investigated these matters which they have brought up, but they might be perfectly justified in having done so.

Hon. Mr. KINLEY: I think the same thing is true of the spy trials, where you are dealing with organized crime.

Hon. Mr. PETTEN: Another thing that strikes me is the matter of the Japanese incident during the war. I have been long enough in this world to have passed through several phases. The first phase is getting indignant when you hear of something apparently unfair to anyone. On the other hand, I realize that we as a nation must put the welfare of the nation first, and there are times when it is absolutely in the interest of the welfare of the nation that we do certain things which might cause some of us to suffer some loss of our rights and liberties. However, I think there is always a means of redress.

Mr. NOBLEMAN: Next:

(h) U.N. Declaration, article 20: Everyone has the right to freedom of peaceful assembly and association . . .

In Prince Edward Island by an Act of 1948, since repealed, it was declared illegal for a trade union to affiliate with other trade unions

outside the province. It was even illegal for an outside trade union official to enter the province to deliver an address.

On April 1, 1949, the *Toronto Daily Star* reports that policemen broke up a students' rally on the steps of McGill University, Montreal, called to protest police action in breaking up a Peace Council rally the previous night.

- (i) U.N. Declaration, article 19: Everyone has the right to freedom of opinion and expression; . . . to receive and impart information and ideas through any media and regardless of frontier.

Under the Padlock Law of the province of Quebec the Attorney General is given power, at his discretion, to padlock for one year any premises which he believes are used for the propagation of communistic ideas. No trial, conviction, or legal formalities of any kind are required and there is no appeal.

Recently the Quebec Board of Cinema Censors has been granted power to authorize the agents of the Attorney General to confiscate and destroy not only all copies found in the province of an issue of a periodical containing pictures of which they disapprove, but also all subsequent issues for an undetermined period.

The Accurate News and Information Act of Alberta in 1938 gave the Chairman of the Social Credit Commission power to interfere with the press. This Act was pronounced invalid by the Supreme Court of Canada because, in the words of Chief Justice Duff, it would "interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of the B.N.A. Act".

A by-law, passed by the municipality of New Toronto, Ontario, in 1937, prohibiting the distribution of trade union leaflets in the streets, was declared invalid. In Quebec at the present time, under the Cities and Towns Act and the Municipal Code, municipalities have the power to prohibit the distribution of circulars and other similar printed matter in the municipality. In defending this law, the premier of the province is reported in the press as saying: "It is necessary to give the municipalities complete power to cope with subversive ideas." There is also a provincial law which provides that the local authorities can require a person to obtain a permit before a public meeting can be held, and this law does not seem to have been a mere formality in its application.

Since 1892, when our criminal code was enacted, Canada has had more prosecutions for sedition than all the countries of the Commonwealth and Empire put together, excepting India. This seems to indicate that authorities have been using the charge of treachery to curb activities which may have been distasteful to them, but which were probably not unlawful.

Those examples of governmental action in Canada seem to us to indicate a need for a clearer definition of what is, and what is not, consistent with our type of political and judicial institutions.

- (iii) Examples of racial and religious discrimination in Canada

- (a) Discrimination in Employment:

In 1948 the following study was made by a national Canadian magazine:

Two young women, each with the same secretarial qualifications, were selected to answer ads for stenographers, typists, bookkeepers, and filing-clerks. These occupations were chosen because they cut across the industrial and business field, and because of the current shortage of experienced help in the secretarial field.

One girl took the name of Greenberg, the other the name of Grimes. The girl with the Jewish-sounding name phoned the prospective employer first; the other girl phoned a few minutes later. The test was tried on 47 employers who were advertising in the papers for help.

In 41 cases the girl who gave her name as Grimes was able to make an immediate appointment to discuss the job. In six cases she was told the job was filled. The other girl (who phoned first) was able to make appointments in only 17 instances. In 21 cases she was told the job was filled. In nine other cases she got every kind of brush-off. More than a week later, eleven of the firms which had told her the job was filled were still advertising for help.

To a lesser extent Canadians with Slavic or other non-British European names meet at times with similar difficulties in seeking employment. To a much greater extent Canadians of Oriental or African ancestry meet with this problem with many employers. With respect to Negroes, according to an article in the *Toronto Globe and Mail*, March 9, 1949, "Many coloured people have gone to the United States to face the social prejudice there, sooner than the economic discrimination which they claim makes life impossible for them here. In the business and industrial world generally, Negroes feel it is all but hopeless to get anything but low-paid manual jobs."

There are also some important branches of our economic life which seem to have a policy of employing very few Roman Catholics. People coming to Canada from Great Britain sometimes remark on the fact, as being something peculiar, that the application forms of many quite secular enterprises enquire after the applicant's religion.

Hon. Mr. Ross: All of these discriminations are as to individuals rather than to government? It is not government discrimination?

Mr. NOBLEMAN: No, by private employers. We submit later that there should be a law to prevent such discrimination.

(b) Discrimination in the use of public places and institutions:

According to an Ontario press report, one Mrs. Marie Johnston of the Cape Croker Indian Reserve was, according to her physician, Dr. F. M. Williamson of Warton, Ontario, refused admission to the Saugeen Memorial Hospital for treatment of back injuries and an X-ray, because of her race.

Several years ago in Ontario a case became public in which a young Negro girl for a long time tried in vain to find a hospital which would admit her for training as a nurse. At this time many similar cases of discrimination in educational opportunities were brought to light.

Of the 29 resorts tested in this way, Marshall was able to make reservations for a two week holiday in 24 cases. Six resorts which didn't bother to answer Rosenberg made prompt reservations for Marshall, and six other resorts which wrote Rosenberg telling him they were full, wrote Marshall offering him several choices of rooms and cabins.

Discrimination of this type affects not only the enjoyment of summer resorts, but often prevents the obtaining of a night's lodging. Last fall a visiting Negro trade unionist who had a speaking engagement in Chatham, Ontario, not only had his hotel reservation in Chatham cancelled when they learned that he was a Negro, but was unable to find any place to stay in town, and so was forced to spend the night in London, some miles away. Such experiences are by no means exceptional for members of some of the racial groups in our country.

According to a report in the *Toronto Globe and Mail*, of May 3rd of this year, a case came before the Toronto Civic Property Committee of a local barber who had refused to cut the hair of a young Negro boy. The barber stated,

through his counsel, that during his 26 years as a barber he had followed a custom that was industry-wide of not servicing Negroes, but that he would gladly cut the hair of the boy provided the city compelled other barbers to follow suit. In Dresden, Ontario, where similar cases of discrimination in the use of places of service and amusement have become public, local authorities are reported to believe that the problem should be dealt with by provincial anti-discrimination legislation. Several municipalities—for example, Windsor, Toronto, and Oshawa in Ontario—have passed legislation to prohibit racial and religious discrimination in certain types of licensed establishments, and there seems to be a growing acceptance of the idea that laws, rather than moral exhortations to the individual, are the first step in clearing up the problem of racial discrimination. For the individual who moves ahead by himself is reasonably afraid of losing customers.

I might add here that Fair Employment Practices Acts are in existence in eight states of the American Union and have proved fairly satisfactory. The most prominent example is in New York state, where the act was passed in 1945.

The CHAIRMAN: Have any of our provinces passed such legislation?

Mr. NOBLEMAN: No. Mr. Chairman, there is no Fair Employment Practices Act in existence in Canada.

(c) Property discrimination:

The common form of property discrimination is the racial restrictive covenant inserted in a deed or lease to exclude members of certain races or religions. An example is the following covenant in use in the Grand Bend area of Lake Huron which was put into action when judgment was passed on the Beach O'Pines case:

The land and premises herein described shall never be sold, assigned, transferred, leased, rented or in any manner whatsoever alienated to, and shall never be occupied or used in any manner whatsoever by, any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood, it being the intention of the Grantor to restrict the ownership, use, occupation and enjoyment of the said recreational development, including the lands and premises herein described, to persons of the white or Caucasian race not excluded by this clause.

We are happy to note the recent Act of the Ontario legislature making void any future covenants of this type. I believe the Manitoba legislature has passed a similar Act.

The above examples, we believe, are sufficient to show the need and value of a clear statement of human rights and fundamental freedoms in the Constitution of Canada.

Thank you, Mr. Chairman and honourable gentlemen.

The CHAIRMAN: We thank you, Mr. Nobleman.

Hon. Mr. PETTEN: Mr. Chairman, may I first congratulate the young lady who read the first part of the brief? I did not catch her name.

The CHAIRMAN: Miss McCrimmon.

Hon. Mr. PETTEN: I think she presented a really splendid brief. There is one paragraph that specially struck me, on the second page, the one which begins in this way: "A great deal of idealism has gone into the creation of our Canadian democracy". We are going to get a lot of help out of this brief.

To the gentleman who read the second part of the brief I should like to say that I am entirely sympathetic with the ideas he has expressed, and I hope he will not misunderstand me when I say that we must be prepared to prove any statements we make in the Committee's report, as otherwise we would weaken our case. We must be very careful in this respect. I am deeply in sympathy with him and I thank him also for this splendid brief.

The CHAIRMAN: I should like to join in that expression of appreciation of this brief. I underlined certain portions of it as Miss McCrimmon was reading, and I thought it was wonderfully written.

Hon. Mr. PETTEN: It is, indeed.

The CHAIRMAN: It is beautifully phrased, and sound as a bell, in my judgment. This is the last brief that we shall receive at an open hearing, unless we change our ruling, so, ladies and gentlemen, you have the honour of concluding our open hearings. We have concluded on a very lovely note indeed and we thank you for coming. It is a pleasure and a gratification to us that youth organizations are thinking along lines of this kind, because, after all, we shall not be here much longer and you will be taking over. I am perfectly confident that you will play a prominent part in the public life of your country before you are through, and I wish you all success.

Before the committee rises I should also like to express my appreciation to the senators who have loyally and patiently attended these meetings and made them possible. We have never been without a quorum.

At 12.50 p.m., the committee adjourned to the call of the Chair.

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Canada, Human Rights and Fundamental
Freedom, Special Comm. 1950

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THE SENATE OF CANADA



PROCEEDINGS

of the

SPECIAL COMMITTEE

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

No. 9

TUESDAY, JUNE 6, 1950

CHAIRMAN

The Honourable Arthur W. Roebuck

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Briefs and Letters submitted to the Committee.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950



ORDER OF APPOINTMENT

(Extract from the Minutes of Proceedings of the Senate for 20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty, and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth without distinction of any kind such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
Clerk of the Senate.

To The Committee of the Senate on Human Rights.

Gentlemen:

I have read the briefs submitted to your Committee with great interest and appreciation. I am only sorry that circumstances did not permit of my contributing one myself within the allotted period. Would it be possible for the Committee, in lieu of a brief from me, to place on its records this letter which deals with a phase of Human Rights that did not receive formal attention in the briefs submitted, their history?

It would seem to me valuable to have a few pages devoted to the origin and course of development of Civil Liberties within our system of society and possibly, as a historian, I can put into these pages something that may be useful to the Committee in making its report.

Canada's Historic Traditions:

Our Canadian society and its Government, as everyone is aware, rests on two historic traditions, the French and the English. These two traditions have been subjected to the forces of our North American environment for many generations, with the result that both have altered considerably from their original form. Each has also influenced the other, so that we have in Canada today a certain admixture of French and English institutions, baked together, as it were, in the oven of the North American environment. The result is that our Canadian system of society and government cannot be described in simple words such as "French" or "English". It is Canadian.

But of course the original historical traditions are still easily discernible and they must be understood if their results in producing our new Canadian

tradition are to be understood. I would, therefore, ask permission to set out what seems to me, speaking as a historian, to be the gist of the French and English traditions respectively, and then to draw certain deductions from this material with respect to Civil Liberties.

The French Tradition:

The former Kingdom of France, as it existed before the French Revolution, was forged out of the disorder of feudalism by the French kings. Many centuries ago, disorder in the land of France was so great that the ordinary man was willing to pay almost any price for peace and quiet. The price he paid for the repression of the feudal baron by the king was the absolutism of the king. France developed the institutions of an absolute monarchy. This admitted of no compromise between private right and public right, and public right, that is to say, the authority of the Crown, everywhere prevailed. If by the 17th century, the century in which Canada was founded, any tradition of liberty remained, it lay in those provinces of France which had never lost their provincial assemblies or estates (known as *les pays d'états*) and in certain of the towns and cities which had charter rights, or rights as *communes*.

It was the absolute conception of the French state which was transferred to Canada. In 1663 when the Province of Canada was formed by Louis XIV, no assembly was given to it: it became what was known in France as a *pays d'élection*. This had important consequences in the nature of Canadian life, which will be referred to below. Nor were any of the rights and privileges of the historic *communes* of France transferred to Canada; Quebec, Montreal, Three Rivers, the three towns of the old regime, being under the direct administration of the *intendant* and his deputies.

France, however, although an absolute monarchy, never became a totalitarian state, for the King always had a great rival in the state which he could never entirely subdue to his will, namely, the Church. It has been well said that where Church and State exist together on co-ordinate terms, liberty cannot entirely perish.

The French Legal System:

Nor was France lacking in another modifier of absolutism, namely, the system of law. It is important to understand the general nature of the old French legal system because it was this system which was inherited by French Canada and has come down in some respects unchanged to the present day in the Province of Quebec.

France of the old regime derived her law from three principal sources. There was first of all, immemorial custom. Each province had its custom and in the course of time these came to be codified and written down. One of the most sophisticated of those customary codes was that of the capital, Paris. It was the Custom of Paris (*coutume de Paris*) which in 1663 was officially declared to be the law of Canada.

Roman Law as a Source of French Law:

The second source of French law was Roman Law (*lex scripta*). The Roman Law is one of the world's great systems of jurisprudence and it has usually been considered also to have been one of the strongest instruments of absolute government. One of its leading maxims is that "the will of the Prince has the force of law". This gives an opportunity for absolute conceptions to grow up and it is significant that those countries which have developed absolute governments have been Roman Law countries.

One of the most important aspects of Roman Law has been the nature of its processes of trial. Generally speaking, Roman Law regards a trial as a scientific

investigation in which no method of getting at the truth is neglected. A trial under Roman Law is an *investigation*, an *inquiry*, an *inquest*, an *inquisition*. Men learned in the law conduct the trial. It being the sole objective to arrive at the truth, the liberal safe-guards afforded private parties under English Common Law did not develop. Thus under Roman Law, trials could be conducted in secret, though they were not necessarily so conducted, anyone could be questioned, his evidence recorded and later an accusation preferred against him and, after the accusation had been preferred, he could again be forced to testify. There was no requirement by which witnesses were examined in the presence of the accused and, of course, there was nothing like the jury system. And, behind the power of judge and court, there lay the device by which men could be forced to speak, the black shadow of torture (*la question*).

These Roman Law methods have gone all over Europe with the exception of England and, I think, the Scandinavian countries. The countries of western Europe, such as Holland and France, have today greatly modified them but even in these countries the old Roman Law traditions give their tone to the general legal atmosphere.

It can readily be seen that under Roman Law the tendency would be to give to the person subjected to its processes a minimum of protection against the authorities. This came out very well in a remark of one of the Attorneys-General of France, made after the celebrated criminal ordinance of the 1680's. "Were I accused," said he, "of stealing the Steeples of Notre Dame Cathedral, I would not attempt to defend myself against the charge; I would begin my defence by running away." Accusation, that is to say, meant condemnation.

Legislation as a source of French Law:

The third source of French Law consisted in the edicts and ordinances of the King or those of his deputies throughout France. For purposes of administration, the Crown employed the officials known as the *intendants* who had legal powers of a very wide nature relating to justice, police and finance. On all of these they could issue their own ordinances, subject to the eventual approval of the Crown. The result was that in addition to the many highly formal and elaborate pieces of legislation originating from the Crown itself, which tended to form what in English would be called a code of statute law, there were every year innumerable subordinate pieces of legislation issued by the *intendants* on every conceivable subject. This was the system that was introduced into Canada in 1663, a system consisting of the legislation of the King of France and of local legislation mostly put out by the *intendant*. To those brought up in English ideas, the whole system was fluid, depending on the will of the officials in charge. There was nothing like the formal solemnity of English processes of legislation. Echoes of this type of government, where the official was both judge, jury and legislator, were to be heard in the imperial pronouncement made at a recent trial in Montreal, when the governing official is reported as having in substance declared that because a man acted in a manner displeasing to the authorities in one area of conduct, he was therefore deprived of his privileges in another and completely separate area.

The Laws of Canada:

Such was the law of France as introduced into Canada in 1663; it was the basis of the government of Canada as a province of France until the cession of 1763. During this time there were superimposed upon the structure of French law innumerable pieces of Canadian legislation and innumerable local court decisions which were built into Canadian law. Since there was no printing press in Canada until after the Cession of 1763, the *Law of Canada* were mostly

carried in the memories of the legal profession and when the English took over, owing to this they were unable to make head or tail of the Canadian legal structure.

Despite the formal absolutism of Canada as a province of France, nobody would suggest that the Canadians were an unfree people. For one thing the Crown of France kept justice cheap and everybody had the privilege of waging lawsuits against his neighbour if he wished. The impression is that most people availed themselves of this privilege, for Canadians are described by everyone as litigious and insistent on their rights against their *seigneurs* and against their priests. They also had their own ways of balking the will of the authorities, the governor or the *intendant*. Thus it is on record that despite the instructions of the King to the *Intendant*, that the city of Montreal should be surrounded by walls and that the citizens should pay the cost of the construction of the city walls, year after year the people of Montreal managed somehow or other to get out of the tax which was proposed. They believed not only in no taxation without representation, but even more strongly in no taxation.

The Freedom of Space:

There was, of course, another recourse against French absolutism and that was, to put it tersely, the bush: every Canadian who felt the pressure of authority too severely could get out and go to the *pays d'en haut*, go Indian, become a *coureur de bois*, etc., etc. Between their own natural stubbornness and sense of freedom and the infinite space which the new continent afforded, the Canadian proved difficult to coerce and every official used to remark on the difference between them and the people of France in this respect.

The North American environment, it is evident, was having its effect and a natural democracy was growing up in Canada, even under the formal institutions of absolutism. Of course, sooner or later the absolute authority would have caught up with the inhabitants, bush or no bush, and then they would have found that they had no formal theoretical defence against it. This is the vast difference between Canadians in the French regime and Americans in the Colonial period: the Americans had formal institutions of government and freedom which they had brought with them from England and which they were later to use as the foundation of their own national institutions. The Canadians had nothing but the institutions of French absolutism and such evasions as the wilderness might procure from them. Their fate would have been either to have passed under absolute government or to have rebelled and made a revolution as their fellows in France did a generation after the English conquest. That, however, leads us into the realm of speculation. The hard fact is that French Canada entered the English period without formal institutions of freedom: its citizens had no legal rights against the state.

French Canada and English Institutions:

The question is whether, in the two centuries since the conquest, French Canada has managed to incorporate the institutions which were grafted upon it by the rough process of conquest. Have they become, as they are in English Canada, the bone and fibre of the community?

—This is very much to be doubted. One of the honourable members of this Committee in examining a gentleman who presented one of the briefs seemed to find it incredulous that a police officer should not have the power to prevent the distribution of pamphlets within his jurisdiction, if he considered them to be improper to be distributed publicly. Almost any English Canadian would find it incredulous that a police officer should have this power, because to the English Canadian the police officer acts within a very limited range of authority and could not possibly be entrusted with wide discretion, since what he does must be

done under the law. I hope I am not pressing this point too far when I suggest that a willingness to give discretionary power to the police officer indicates a survival of the mentality of the old regime, when the authorities, either as *Intendants* or *Sub-Délegués* or Captains of Militia, could exercise almost any kind of discretion without necessarily having specific authority for it.

Of course there are obviously many areas of Canadian life in which French Canada has adopted English institutions in the most intimate and thorough-going way, particularly such areas as parliament and representative government generally. It is hard to say what the exact influence of the last two centuries has been in the life of French Canada and some opinion upon this might perhaps better be deferred until the English institutions themselves have been examined.

The English Tradition:

It cannot be too emphatically pointed out that the French and English traditions began at almost the same point: they began in the feudal monarchy of the France of the 11th century. William the Conqueror was a Frenchman, the vassal of the king of France. All his conceptions were French. So far as I know, no king of England for three hundred years after the Norman Conquest in 1066, was able to speak English. Yet this was the formative period during which all the characteristic English institutions grew up. English institutions—that is to say, the Common Law, the Writ system, Royal Justice, the courts, the Jury system, the system of Trial, Criminal Law, the land law, the law of property and of succession to property, the Council, the House of Lords, the House of Commons, and innumerable minor institutions—all these were forged by medieval French-speaking Roman Catholics. English institutions, in their origins are mostly French.

But since the Middle Ages, the two countries have had very different histories and have diverged widely, so that English institutions have come to have their own genius which is as different as can be from anything that the France of the pre-revolutionary period knew and that is the only France we are concerned with, for it is the true motherland of French Canada, not the modern republican and democratic France, whose institutions have been copied in turn in large part from those of England.

Equipoise, or Balance, as the Explanation of English Free Institutions:

England was much smaller than France and because of this from the first there was a much higher degree of public order. This public order represented an equipoise between king and feudal baron. The evidences of this equipoise or balance are to be seen in the many formal legal settlements of their differences. When king and baronage fought each other in England the result was not complete triumph by either party, but compromise. It is these compromises which are embodied in the historic documents that constitute for England, her fundamental law. These documents are numerous. I name among others, the Charter of Liberties of Henry I, 1100; Magna Carta, 1215; The Provision of Oxford, 1258; The Confirmation of the Charters, 1297. The very essence of Magna Carta is that it is an agreement between the king and his barons that the customs which have always obtained will continue to obtain. But Magna Carta is only the most prominent of these documents, for they all point in the same direction. Magna Carta came to be symbolic and on each occasion when a king's hand got too heavy, the invariable recourse was to ask for another confirmation of the Great Charter. Its details were soon forgotten, though reissued at frequent intervals through the whole medieval period, but it came to stand for the idea that there was a point beyond which the king could not go, that the king had to behave himself in accordance with custom and that in the last resort there was a principle in

the state more powerful than he was. In testimony to this principle, two medieval kings, Edward II and Richard II were deposed. The Bills of Accusation against Richard II contained as the main charge the accusation that he had said that "the laws of England were in his own breast." By the year of his deposition, 1399, Englishmen had decided that the laws of England had to be in the Statute Book.

By the year just mentioned, 1399, England had secured a fundamental law, the fundamental law stated in the Charter and particularly the idea contained in its famous 39th section

No freeman shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.

(Nullus liber homo capiatur aut imprisonetur aut dissaisietur aut utlagetur aut exulatur aut aliquomodo destruat, nec contra eum ibimus nec mittemus vel per legale iudicium pariorum suorum vel per legum terrae.) Magna Carta, 1215, § 39.

The very essence of this section consists in the rule of law. While the word "freemen" was originally used in the feudal sense and no doubt did not include the bulk of the people of England, yet as time went on the class of *freemen* got larger and larger until eventually it came to include every British subject.

The fundamental law of England, therefore, simply consists in the concept that at all times the rule of law shall prevail and that there cannot be anywhere in the state arbitrary authority. After the Middle Ages closed, England experienced nearly a century of revolution and it was during this period, which consisted of the great revolutions against the Stuarts, that the spirit which we still possess was infused into the historic institutions which had already been established.

The English Tradition in America:

When Englishmen left England and came to America to found their colonies, they had very clear ideas as to what these historic institutions were. They brought out with them, and were ready to assert what they called "the laws of England." They insisted on the "rights of Englishmen," and this, many years before King Charles's head was cut off. Both Massachusetts and Virginia were founded before the outbreak of the English Civil War, that is to say, before the Parliamentary Monarchy had been established. But the inhabitants of both these colonies soon asserted their rights as Englishmen and these rights consisted in representative institutions and the English Common Law. Representative institutions and common law developed in America according to their own genius and today have become rather different in the United States from what they are in the parent land.

The Parliamentary Monarchy:

No doubt they would have developed in much the same way in England if it had not been for the attempt of the Stuart Kings, Charles I and James II, to revamp the institutions and common law to their own advantage and bring England nearer to the model then prevailing on the Continent of Europe, which model was absolute monarchical government. The result of the attempts of the Stuart Kings to impose this type of regime on England was that Charles I lost his head and James II lost his crown. A new king and queen, William III and Mary, daughter of James II, were brought in and accepted the monarchy in their joint names. They also accepted the famous statement which went with it, the Declaration of Right. This statement, which was passed into law as the Bill of Rights of 1688, was looked upon as the fundamental law of the revolution, that is, the fundamental law of parliamentary monarchy, and although it is true that it is an Act of Parliament and can theoretically be

changed by another Act of Parliament, yet it was part of the revolution settlement and the Crown of England today rests on that settlement. It would be an arguable point that if the Bill of Rights were changed in any serious way then the whole pact made in 1688 between the people of England and their new sovereigns would be repudiated and that the present reigning house would then cease to have valid title to the crown. The Hanoverian Succession, the Bill of Rights and that other great document of the period, the Act of Succession, all go together and it is difficult to see how one could be changed in any serious particular without invalidating the others.

The Cabinet the Modern Crown:

The Parliamentary Monarchy is a familiar story and no one would now waste much time in championing the rights of Parliament against the King. The battle of liberty has shifted into other areas. One of the main areas is the battle of parliament or rather those it represents, the people, against those in control of the Crown, that is to say the executive or the cabinet. The cabinet is the modern crown and it is rapidly assuming a far more powerful place than the Stuarts ever had, and also a more intrinsically irresponsible one. 'If the Stuart revolution ever have to be reenacted, the parliamentary side will be the same outside, but the place of the crown will be taken by the Prime Minister and his colleagues. It is difficult to foresee the necessity of cutting off the head of any Prime Minister of Canada but the fact that it might some day be necessary to proceed to stringent measures against the Chief Executive is possibly a salutary check on the propensity of all those in public office to increase both their power and their importance.

The modern struggle for liberty centers in the struggle between the Executive and the people or their representatives. In this struggle the people have various historic weapons in their hands. I have pointed out one, and perhaps the chief one—the fundamental idea that law and not personal will is the principle of the State. There are many others; among them representative government is probably the most important.

Representative Government:

It is impossible in a short document to debate the pros and cons of representative government. We all know both its short-comings and excellences. Its short-comings arise from the weakness of human nature and from the severe discipline of the modern political party. Despite such difficulties most people recognize that representative government manages to impose a check upon the executive tendency towards despotism which no other instrument can. All I could add here would be an exhortation to members of Parliament to remember the great traditions that lie behind Parliament and to cultivate the independence of character and of decision which their predecessors over the last seven centuries at various critical stages of the history of the English-speaking world have shown.

The English System of Law:

In the day-to-day working of our institutions nothing has been more practically important than the English system of law. It furnishes the strongest possible contrast with the French system of law, particularly in the nature of its trials. Historically the English trial is a free-for-all between plaintiff and defendant waged in the presence of neighbours. Here the words of Magna Carta still strictly apply, "nor will we go against him...*except by lawful judgment of his peers or by the law of the land.*" The law of the land means immemorial custom; which assumes that a man must have his chance to confront those who make accusation against him, to examine them in public and at a given moment to appeal to a group of his neighbours to decide whether

he is guilty or innocent—the jury. Trial in open court, the right to confront hostile witnesses, the right to plead guilty or not guilty, and then to keep silent (not to have to testify against oneself), the right to put yourself on your country (that is to say, appeal to the jury), all these are immemorial English rights. The essence of trial is publicity. All these rights were established many centuries ago, long before parliamentary monarchy made its appearance and they have been carried out from England to the ends of the earth. They are so deeply rooted in people of English descent that it is difficult for them to envisage any other kind of public trial.

Reason for Dislike of Roman Law Methods:

That is why the spy investigations of a few years ago made such a profound impression on English Canada. In their secrecy, their denial of legal counsel to the accused, their virtually making the accused testify against themselves, they cut across the most deep-rooted conceptions. They were Roman Law proceedings, they were an *investigation*, an *inquiry*, an *inquest*, an *inquisition*. One of the most popular acts of the Long Parliament before the Civil War of 1642, was the destruction of what were called the Prerogative Courts, prominent among which was the Star Chamber. The animus against the Star Chamber was precisely because the proceedings were Roman Law proceedings. In the Star Chamber men could be required to testify against themselves and if they would not speak, the use of torture was not unknown and all this could be done in secret. Three centuries ago Englishmen unceremoniously expelled Roman Law proceedings, with their nasty suggestion of torture always hanging in their background, and have never allowed them to come back. The antagonism shown in Canada to the method of conducting the spy investigation (and certainly not because Canadians looked with favour on the spies) is possibly a guarantee that Roman Law proceedings will not be allowed to get a serious hold in those provinces of Canada in which the Common Law historically prevails.

Quebec and Roman Law:

In Quebec, with its Roman Law traditions, the outlook is much more uncertain. I am quite sure no English province would pass a Padlock Law. Those French-speaking Canadians who know my record, and many of them do, know I am actuated by nothing but sincere friendship for French Canada and in passing an opinion upon the Padlock Law, I certainly do not condemn the French-speaking people of Canada. I regard the Padlock Law as their affliction and know that many of my personal friends feel a deep sense of personal humiliation because it is on the Statute Books of their Province. One of the members of this honourable Committee expressed the view that those who protest against the Padlock Law are insulting the Province of Quebec. On the contrary, it is those who have passed and supported such arbitrary measures as the Padlock Law, which are in complete antithesis with the spirit of free institutions, who are insulting the Province of Quebec and who are, incidentally, by such measures taking the surest course to ensure mounting success for that political creed against which those measures have been enacted.

It is a sure instinct to trust to the historic Common Law processes of trial. Justice at times may miscarry, and naturally judges are human beings, but the guarantee of publicity, the assurance that somehow or other you can get your case heard and the innumerable devices of freedom with which the citizen has been surrounded, are the unique monument of the English-speaking race, its greatest contribution to the world's civilization. I wish to pay this unreserved tribute to the legal tradition we have inherited from England and to enjoin upon all members of the legal profession their duty to preserve it in unsullied form.

Our Canadian Public Tradition:

During the last century and a half or so, this country has been more or less self-governing and has taken the traditions which it received from France and England and made them its own. In some cases there has been some amalgamation, but in most it has been a matter of adaptation. One thinks at once of the way in which the British system of parliamentary government was adapted to Canadian usage, principally through the two great devices of Responsible Government and Federalism.

Both those great achievements were the work of both races. With Responsible Government we associate the names of Louis Hippolyte Lafontaine and Robert Baldwin, to say nothing of others scarcely less prominent. With Federalism we associate the names of many, among others, John A. Macdonald, and Georges Etienne Cartier. Those are the specific Canadian accomplishments in public institutions, but the legal systems which had existed previously were simply continued. Thus the English provinces of Canada are Common Law provinces and the Province of Quebec has the laws of Canada as they were guaranteed to it by the Quebec Act of 1774 and as they have been added to since.

It should be carefully noted that Federalism, as expressed in the British North America Act, took many things for granted. Among others it took for granted the whole background of Common Law institutions which the English-speaking Canadians had brought overseas with them, just as the New Englanders brought out with them in 1630 the *laws of England, the rights of Englishmen*. So the English-speaking Canadians in 1867 felt secure in the possession of their historical rights and privileges under English law. These included not only the obvious and specific institutions such as representative government, trial by jury, and *Habeas Corpus*, but also all those freedoms which the Common Law had taken for granted and for which Englishmen had to fight their king in the seventeenth century. In 1867, when the British North America Act was passed, it would not have appeared necessary to many people to state that British subjects were possessed of freedom of speech, or of freedom of assembly. Such rights were taken for granted and if documentary evidence of their existence were needed the Bill of Rights of 1688 could be pointed to.

Canada as Contrasted with England:

In the period since Confederation, we have got a considerable distance further away from our English origins. Unfortunately there are not many of us Canadians who can substitute for inherited tradition a sound knowledge of history. In the period since Confederation our population has been reinforced by hundreds of thousands of people from countries outside the English tradition. The result is that today the average man is probably not as aware of his historic rights and privileges as was his great-grandfather. To the average Canadian today, the execution of Charles I, the abdication of James II, the Petition of Rights, the Bill of Rights, the Act of Succession and other great fundamental documents such as those, are hardly known: they may get cursory mention in school days but they are hardly part of our bone and fibre, so to speak. Responsible government and Confederation we framed ourselves, and while no doubt the ordinary man could not give a very reasoned explanation of these institutions yet the average citizen may be said to *feel* how Confederation works: while he cannot distinguish between the powers that belong to the Dominion, and those that belong to the Provinces, he has a measure of appreciation of how the two governments work in relationship to each other.

But he knows only in the vaguest way that he has other rights which have come down to him through other channels. He more or less takes it for granted that he has the right to say what he likes, but can hardly cite chapter and verse for this right. This is probably the outstanding difference between the people

of Canada and the people of England, for in England battle after battle has been fought, either to preserve those fundamental rights or to win them and each battle has renewed the memory of all previous battles. For example, when, a generation ago, the struggle for women's suffrage was taking place in England, much resistance was offered to "votes for women" and many scenes of struggle and a certain degree of violence ensued. Women quickly reminded themselves of the struggle their ancestors had waged against Charles I, or the struggle for the reform of Parliament in 1832. This relatively minor struggle for political freedom produced a review of the whole course of the historic English struggle for freedom.

Nothing of the sort occurred in Canada. Most people simply assumed that if women wanted suffrage, they ought to have it and in all the Provinces except Quebec, it came without any fight worth talking about. This has been the invariable course of the struggle for political privilege in Canada: our freedom has come easily and the result has been that we have neither understood very clearly whence it has come, nor valued it too highly once we have got it.

Canada as Contrasted with the United States:

The United States resembles England in this respect: it has had to fight for its freedom, and like England, its victories in the cause of liberty have been marked by great resounding documents and declarations which can never be lost sight of. No American can ever forget the ringing words of the Declaration of Independence—"we hold these truths to be self-evident . . ."—no American ever forgets the solemn declarations in the first ten amendments to the American Constitution, the so-called Bill of Rights. The Americans have had the great good fortune to produce men at various times in their history capable of enunciating in eloquent words this fundamental principle of a free society. I refer to such figures as Thomas Jefferson, Abraham Lincoln and Franklin Roosevelt. The British too, of course, have been conspicuous in this respect, and no one can discuss a subject like this without having come to mind the extraordinary eloquence of Mr. Churchill in this last war. *It is of the utmost importance to the health of a free society that from time to time the principles upon which it is founded be restated.* Such men as I have named have made these restatements for Great Britain and the United States. What of Canada?

In English Canada hardly a figure comes to mind whose words have risen above the pedestrian level in such matters, certainly not since Confederation. English Canada is a land conspicuously lacking in prophets. Before Confederation this was not quite so true, for in those days, the abuses in government produced men like Joseph Howe, Robert Baldwin and Wm. Lyon Mackenzie.

The Tradition of Freedom in French Canada:

In French Canada, I am happy to say, the great tradition of freedom has found eloquent utterance. A small people who can produce a Louis Joseph Papineau, a Louis Lafontaine and a Sir Wilfrid Laurier have nothing to be ashamed of. I like particularly to dwell on an incident in Laurier's career which concerned the Salvation Army. When the Army first began to hold its processions in the City of Quebec about fifty years ago, it was met with obstruction and abuse of much the same type as the minor Protestant sects are encountering in the Province of Quebec today. Laurier faced the situation squarely, he wrote to the mayor of Quebec "the Army must be allowed to march; if necessary I myself will march at the head of the procession." The reference will be found in Skelton's *Life of Sir Wilfrid Laurier*. No consideration of votes, no other mere party considerations deterred Laurier from acting in the interest of freedom and tolerance and in line with what he considered his Christian duty.

That, alas, was fifty years ago.

Each of the three men I have mentioned, Papineau, Lafontaine and Laurier, were steeped in the English tradition of freedom. In their persons, French Canada took over and made its own the English tradition of freedom. It would appear difficult to see how French Canada could today repudiate that tradition together with its institutional expression, without repudiating these three great Canadian sons and to repudiate them would be to repudiate itself. Papineaus, Lafontaines and Lauriers would have made short work of Padlock Laws. The measure of the greatness of their successors may well lie in their ability to follow in their footsteps. It is to be noted with gratitude that the present Prime Minister has himself recently made a public gesture which is worthy to rank with the courageous attitude of Sir Wilfrid: Mr. St. Laurent in his recent pronouncement against racial intolerance is proving himself a worthy successor of his great predecessors.

The Canadian Tradition of Liberty in summary:

If our Canadian tradition can be summarized, then we would have to say that it represents a half-formed amalgamation of English and French traditions, plus a certain admixture of our own native development. We would have to add that today it is in the position of rapidly forgetting its European origins in the process of building its own nationhood but is lacking great and eloquent exposition of the doctrine of liberty. What Canada needs at the moment is something which will summarize her vital traditions, that is to say, the tradition of freedom, and place it, as it were, within the reach of the ordinary plain man.

PROPOSALS:

I can think of no more effective method of bringing our traditions down within the ordinary man's grasp than to forge some kind of public restatement. If we were to encounter a severe crisis of liberty, such as England encountered in 1940, then we might hear some Churchillian voice sounding out of Ottawa. That would be one way of restating our traditions. Another way would be to put them in a public document. The British have done this many times and the Americans have done it on at least two occasions. It has been on such things as this rather than upon a "high standard of living" that free nations have been built.

My concrete suggestion is that the Committee in its report, attempt to frame such a document. I suggest to the Committee that it get the statement of principles first and worry about its constitutional form second.

Many of the briefs submitted have elaborated the principles which ought to go into such a statement and the exceedingly carefully worked-over Declaration of Human Rights constitutes an example. Surely out of all the material on hand, the essential statements which underlie a free society, can easily be found.

The Christian Foundation:

If space permitted it would be a congenial task for me to go further and to indicate to the Committee that, as Canon Seeley stated in his eloquent submission, another historic source for principles of freedom and liberalism, and of a still more revered nature, is to be found: it would not be difficult to show that these principles of a free society are based in the first instance on the Christian view of man, the Christian concept of the individual dignity of man and the essential worth of every human soul. In other words, both our English and French tradition of a just society is founded upon this still wider tradition of a Christian society.

It is obviously very difficult to legislate into force the precepts of the Christian religion. Yet these precepts are not any the less influential because they cannot be enforced. We cannot require by law a man to love his neighbour as himself, but the very existence of that great Commandment through the

centuries has had a powerful effect, to put it mildly, in making men hate their neighbours rather less than they normally would. It is much the same with the precepts of freedom.

If we state that one of our ideals is to preserve a free society and that a reasonable measure of freedom of speech is necessary to that end, then we can have, as it were, a mark to shoot at. Our Declaration gets into the schools and becomes part of the up-bringing of the rising generation. No one is simple enough to believe a mere declaration will make a free society, but it is far better to have the declaration because it so powerfully reinforces the efforts of those attempting to keep society free. It might be more difficult than it is to deal with thieves if we did not have the original Commandment *Thou shalt not steal*.

All this can be summed up in repeating that what we need in Canada at the moment is a powerful and cogent restatement of the principles upon which our society is founded.

We need this restatement because our people have been too long without conscious contact with these principles, because we have taken them too much for granted, because there are far too few people in the Canadian State, both French and English, who really are alive to their importance. The stream cannot go on forever flowing through arid territory without tributaries coming in; sooner or later it will dry up. It is in considerable danger just now of drying up—not because many people are consciously trying to assail it, but because its spiritual roots are not receiving adequate nourishment. It is submitted that a statement of the type that I have suggested would have its place in securing the needed nourishment.

The Constitutional Question of a Bill of Rights:

The constitutional question of a bill of rights is too large a matter to be argued in this already long letter and most considerations which affect it have been brought forward in one or other of the briefs submitted. Possibly I may be allowed to summarize some of the general points heretofore made.

1. Canada is a country of fundamental law, not a country of parliamentary sovereignty, such as Great Britain. The British North America Act is our fundamental legal document. The Privy Council opinion is that somewhere within the powers of Dominion Parliament and Provincial Legislatures lies all legislative power. Yet the limitation on each of these bodies are so patent that it seems to me only a cliché to speak of Canadian Parliamentary Sovereignty. It is true that in time of war the Dominion Parliament, or rather the Dominion Government (a very different thing), becomes practically sovereign. But at other times, the Dominion Parliament is far from being a sovereign body for its sovereign powers are limited by the wide range of powers named in Section 92 of the British North America Act and other sections of the Act.

Similarly no Provincial Legislature is sovereign because of the existence of the Dominion Parliament. It is a very different thing to say that the two sets of bodies put together are sovereign from saying that either one in itself is sovereign. We have only a limited version of Parliamentary Sovereignty in Canada and almost every clause of the British North America Act testifies to the limitations placed upon our legislative bodies. Our lawyers have been so steeped in the British tradition that they have not been able, for the most part, to see the essential divergence which has occurred between it and our own. The essence of that divergence is that Canada is a country based on fundamental law, a fundamental law which preserves large areas of their power from the Dominion Parliament or from the Provincial Legislatures or, indeed, in practice from both, for it is rather absurd to talk about Parliamentary sovereignty when everybody knows that even if the desire existed to do so, it would be virtually impossible to alter the provisions in our Constitution which

conferred legal rights upon Quebec's Roman Catholics and Protestants in education and legal rights upon the use of the French language. Canada, I repeat, and in this I disagree with practically every expert whom I have encountered, is not a country of Parliamentary Sovereignty, but a country of fundamental law.

2. Its fundamental law as contained in the British North America Act, assures community rights but does not assure individual rights. It, therefore, needs overhauling and remodelling in order to incorporate within it the historic rights preserved by the English Constitution through the agency of great Constitutional documents, and by the American Constitution through the Constitution itself.

3. The meaning of the Property and Civil Rights clause of Section 92 of the British North American Act has been elucidated in briefs already presented to the Committee. Its history can be briefly given. When in 1774 the Quebec Act restored to Canada the "Laws of Canada," it specifically provided for matters concerning property and civil rights, which were to be decided according to the "Laws of Canada". In doing this it simply lifted a phrase from the old French law and as Professor Scott has shown, made provision for dealing with family matters, family property and that sort of thing under the law to which the people of Canada had long been accustomed. It did not even include under this law mercantile rights or business law. The phrase "Property and Civil Rights" passed into the law of the old Province of Lower Canada and was transferred to the list of provincial powers when the Confederation proposals were written down. It has virtually nothing to do with Civil Liberties, which are an entirely different matter. Over some eighty years of historical ignorance, our courts have succeeded in building into these words "Property and Civil Rights" completely unwarranted conceptions.

The consequence is that people have got the impression that the Provinces are in control of all the ordinary historic liberties. If so they have had control conferred upon them by the misunderstandings of the courts. To the layman it would appear plain, since men usually lose their Civil Liberties by some contravention of the criminal law that Civil Liberties, for the most part, must be the concern of the Parliament of Canada.

There is the wider consideration that Canada, as a Federation proceeding from the people of Canada, can only be made to work if its citizens have the freest possible opportunity for discussion, assembly, printing and so on. Mr. Justice Canon in his Alberta press case brought this principle out and it is now an important milestone in Canadian legal history. It is possible that the judicial decision alone is enough. I would imagine that the more formal statement of the necessity for Civil Liberties as wide as the Dominion is preferable.

4. *The Question of Sovereignty*: The only reference to this which I have seen in the Committee's proceeding is a reference by the Chairman to the words in the British North America Act "the Government of Canada shall be vested in the Queen." He considers these "the strongest words in the Act" and with this statement I agree. But does this mean that we have in Canada the historic English Monarchy without special application to our own circumstances? If it is the Monarchy which is regulated by the Acts of Succession, 1701 and 1936, then I suspect we have the historic Monarchy, for these two Acts, one of which provided for the Hanoverian succession and the other provided for the succession of George VI, effectively dispose of any suggestion that the Monarchy is aught but the symbol of the people's will. There is no mysticism about the Monarchy. The Monarch is the symbolic head of the state, maintained in office, as the case of Edward VIII proved, only as long as he acts in accordance with the wishes of the people.

It is fair to say, then, that we have in Canada not only Parliamentary Monarchy but a Monarchy growing out of the will of the people of Canada and, therefore, a Monarch upon whom any conditions that the people of Canada desire may be imposed. If the people of Canada, therefore, desire to limit the freedom of the Executive by a general statement of their rights, there is nothing in the nature of the Monarchy, in the nature of the principle of sovereignty, to prevent their doing so.

5. *The all-powerful modern Executive:* I have suggested above that we have arrived at a point where the Executive has become exceedingly powerful and in some respects irresponsible. Many people might wish to challenge this point of view but there is no space here to debate it at length. However, my view is that under modern parliamentary conditions, the executive, that is to say the Cabinet, represents such an extreme concentration of power that it is able for most of the time to impose its will not only upon the individual member, but on Parliament as a whole. Moreover the executive is so removed from the average voter that the idea of responsible government becomes considerably watered down. It has been said, and, I think, well said, that what we have under our system of government in Canada is the election every five years of something resembling a dictatorship.

Fortunately for us in Canada, the dictators whom we elect do not have many qualities that normally come with dictators; therein lies our liberty. Nevertheless, as Shakespeare said, "appetite grows by what it feeds on", and of no appetite is this more true than the appetite for power. Liberty is rarely threatened from the circumference, invariably from the center. It is not the few rabid sectaries, Christian Brethren, Jehovah's Witnesses, etc., who are threatening the liberties of Quebec: it is the Government which enacts Padlock Laws which threaten those liberties. Incidentally, when I was in Germany in the summer of 1949, I found pamphlets widely distributed which pictured Quebec as a place where no liberty of religious opinion was tolerated, as an unfree country compared to free Germany. That is not a very pleasant reputation for a Canadian province to have abroad ("Stadt Quebec, stelle deine Zeugen! Keino Gottesdienstfreiheit in der Stadt Quebec!"—"City of Quebec, station thy witnesses. No freedom of religious service in the city of Quebec!"—*Erwachet!* vol. XXVII, No. 6, Bern, 22 March, 1949).

These may be strong words but I wish to emphasize them. The threat to liberty comes from people in power, not from people out of power. What the good citizen has to do always is to watch out for his governors whether these be called Civil Servants, Bureaucrats, Policemen, or Cabinet Ministers. I am not waging war upon individual Cabinet Ministers, among whom there are just as ardent devotees of freedom as I am. I am simply suggesting that office is always a dangerous thing to those holding it and that we shall always do well to maintain and increase the curbs upon persons in power. The whole trend of the times seems to be in favour of increasing the powers of the state. But we must not abandon the effort to build up our dykes of liberty and one of the best methods of proceeding, surely, is to put formal limitations upon our governors.

The man in office invariably wants more power, he always wants a sharp sword to cut through the difficulties of the moment, and it is only human nature that he should do so. It is often difficult to advance good reasons against some measure which will result in an increase in efficiency. But those who are accustomed to view such measures in social and historical terms know very well that efficiency can easily be the death of liberty. Liberty was safe in Canada in the old days under an easy-going Civil Service and when our politicians did not take themselves too seriously. Today with brilliant minds

thronging into the Civil Service and with the sense of pressure and crisis in the atmosphere and the increasing seriousness with which ministers have to take themselves, liberty becomes a much battered hulk.

I sum up this point by again asserting that *the danger to liberty is to be found not among those out of office, but among those in office*. If we can succeed in restraining the hand of the official, we shall have gone some distance in assuring ourselves of a free society.

Conclusion:

I have put down all this material in the hope that it may be of some assistance to the Committee and I am quite aware that it does not constitute the last word on the subject. It is however, I think, a fair review of the historic background and draws some fair deductions from that background. It is not urged in any partisan spirit or party sense. It is urged simply because, as a historian, I think I can see trends in the past and consequently may be in some position to predict the trends of the future. Liberty is at all times easily lost and hardly won. It is eternal vigilance that we need.

I exhort the Committee to address itself to the task of framing a general statement of liberties and to the further task of deciding the wisest way in which such a statement can be made an integral part of Canadian national life. Since we are already a fundamental law state, I can see no objection in going further in that direction and writing into our fundamental law the well-worn list of rights which the two senior democracies, Great Britain and the United States have many times enunciated.

Respectfully submitted,

ARTHUR R. M. LOWER,
Professor of History,
Queen's University,
Kingston, Canada.

MAY 26, 1950.

MAGAZINE PUBLISHERS ASSOCIATION OF CANADA

TORONTO, CANADA

May 17, 1950.

The Honourable Arthur W. ROEBUCK, K.C.,
Chairman—Special Committee on Human
Rights and Fundamental Freedoms,
Senate of Canada, OTTAWA.

Object

It is the desire of The Association of Canadian Magazine Editors to draw to the attention of your Committee the importance of making clear and specific reference to Freedom of the Press in the proposed Bill of Rights for Canadians.

This organization, formed to study problems common to the national-magazine field, respectfully presents the following points for consideration:

1. The Press of Canada, in all its branches, renders a service vital to the preservation and development of our democratic society. Courageous, unhampered maintenance of that service is basic to the guarantee of fundamental freedoms.

2. A nation's Press, operating without pressures or hindrance in the assembling of news and facts, in the exploring of ideas, and in the responsible interpreting thereof, can and should play a major role in safeguarding the rights of the individual and thus ensure the steady growth toward freedom and happiness for all citizens.

3. In a democracy there can be no substitute for a free Press. No Government can provide a parallel service.

4. The printed word has been found to be the most effective, far-reaching and long-lived vehicle yet devised for news, thought and opinion. In Canada the existence of a literate and informed public, mindful of this nation's history and alert to its destiny, offers no small testimony to the value of conscientious, unbiased publishing practices. Magazines, and indeed all periodicals, which hold the mirror up to the life of the nation, which do not retreat from the challenge of self-examination, and which seek to help with the solution of problems for the benefit of the whole population, have been a potent force in this great enterprise of public enlightenment and the creation of a Canadian spirit. Freedom of the Press was a necessary condition to this achievement; it will continue to be the prime requisite in the years of expansion which lie ahead.

In the draft before your Committee, Article 15 provides for: "The Right to Freedom of Thought, Conscience and Religion."

Article 16 follows with: "Everyone has the right to freedom of opinion and expression; This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

In spite of the fact that the phrase "through any media" undoubtedly could be understood to cover the Press as well as radio, etc., it is the considered opinion of our organization that there should be definite mention of Freedom of the Press, and that this should be stated in clear terms in much the same manner as set forth in the first article of the American Bill of Rights, namely:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

May 17, 1950, Toronto, Ont.

THE ASSOCIATION OF CANADIAN MAGAZINE EDITORS,

Mary-Etta MACPHERSON — Vice-President

21 McGill Street,
Toronto 2 Ontario,
May 16, 1950.

Senator Arthur W. ROEBUCK,
Chairman, Special Committee on Human Rights
and Fundamental Freedoms,
Parliament Buildings, Ottawa, Canada.

Dear Sir:—We would like to express our opinion on the inclusion of a Bill of Rights in the Constitution of Canada. We feel that it is essential to have these Rights written into our Constitution. This will give strength to our efforts to work towards achieving these Rights and Freedoms and will assist in pro-

teeting citizens from discrimination and persecution. The acceptance of these will give a greater feeling of security to all Canadians and help us to gain a stronger feeling of national pride.

We recognize that more than the writing of a guarantee of rights is needed. Along with this we need to educate our people to live and work together with mutual respect. We know that this is a long term process but we feel it will be aided by a concrete and Constitutional expression of the ideals to which we are committed.

We wish your committees all success in this work.

Respectfully submitted,

Olga Kombel,
Maude McLennan,
Helen W. Nelson,
Audrey Hill,
Madeleine Asher,
Margaret Moore,
Rowena Smith,
Margaret Learoyd,
Elizabeth J. Connal,
Lois M. Stuart,
Margaret Ryan,

Mabel C. Williams,
Mary Helen Winn,
M. C. McKnight,
Bea C. Higgins,
Isabel Haig,
Jane Lillie,
Gene M. Duffy,
Gudy Sule,
Audrey Ferguson,
Mary Lou Gordon,
Olive Bettie Ross.

SIR GEORGE WILLIAMS HIGH SCHOOL

1441 Drummond Street, Montreal, Que.

May 3rd, 1950.

The Honourable Speaker of the Senate,
Senate of Canada,
Ottawa, Ontario.

Dear Sir,

We consist of a class of men and women who come in the evening, after a day's work, to finish our schooling which we were unable to complete as children due to lack of security, opportunity, and guidance.

We feel that with the passing of the proposed Bill of Rights Canada will be taking an important step in the protection of the liberties and security of her people. We feel sure that if these rights are enforced Canada will be a land of happy and free people. Happy people, free from apprehension and worry, will work harder to make Canada a prosperous country and the world a more peaceful place.

We feel that with the passing and enforcing of the Bill of Rights Canada will be fighting totalitarianism in all its forms in the best and only way possible. If Canada is a secure and happy land, she will not want any way of life but her own.

Our class has gone over the proposed Bill of Rights, article by article, and has come up with only a few criticisms and additions. These are the amendments we would like to suggest:

Article 7: In parts 2 and 3 we would like the word "reasonable" defined. As it stands, "reasonable" could mean any length of time or any amount of money.

Article 10: In part 1 we feel that Public Defenders should be appointed similar to Crown Prosecutors and should be paid by the court (if the Defendant is unable to supply his own lawyer).

Article 14: Part 1 to be changed: "Everyone has the right to own any property without limitations of colour, race or creed, alone as well as in association with others".

Article 16: To be changed to read: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference (and intimidation) and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Except for these changes we found the Bill of Rights to be a fair and just document. We send you our best wishes and hope that your deliberations will result in the passing of the Bill of Rights as a legal addition to Canada's constitution.

Yours respectfully,

The Class of Social Science 54A.

To the Special Committee of the Senate on Human Rights and Fundamental Freedoms

No democracy can hope to exist unless it is continually strengthened by the encouraged diversified abilities of the common people. The greatest height of a benevolent autocracy was reached among the Inca Indians, yet they fell easily and quickly before the Conquistadores. They had everything they required and much that we strive for today in food, shelter, leisure, working conditions, health and recreation, but they had also become passive in individual responsibility, diversity and freedom. (The American Indian by John Collier) Theirs was an imposed conformity in living, in education, in customs, habits and manners which could not change to meet the unexpected and the new.

Freedom must remain an expanding program of *action* of, by and for the people. My contacts as Community Counsellor for the City of Toronto have revealed what appear to me to be startling and dangerous conditions. A first and continuing impression is one of conformity. For two and one-half years I have tried to analyse the forces behind this conformity, and, on the basis of so short a study, it seems that this conformity in Toronto at least, is the result of fear. Although a tradition of human rights is recognized in a general way, almost every component part of that tradition has been violated by at least one example. (See Civil Liberties Brief, Toronto Ass'n) These violations, added to and magnified by rumor and imagination, have led to a very general attitude which could be expressed in this way: "Since I do not know where I stand or what law or new interpretation of law can be used against me, I better keep quiet, never do anything unless I am sure there can be no repercussions, never 'stick my neck out' never trust anyone except my most intimate associates—certainly not those who are only my neighbors, always be agreeable and never disagree in public no matter what the issue unless it is something new, never suggest a new idea first even if it is right, never criticise any person in a 'position', never express a purely personal opinion. I do not know what group or person is in the saddle—may be religious, political or financial and no matter which he doesn't like me—so I better not draw attention to myself. As long as I mind my own business and keep still I can get along." Herein lies the practical result of not having a definite declaration of human rights and a consistent program of action towards its achievement. Such attitudes can and do enforce conformity.

The following are human relations situations in which the attitudes and fears are expressed in contradiction of the first of the four freedoms—freedom from fear.

1. Fear on the part of the average resident of the vagaries of law, law enforcement and the action of civil service employees—such simple things as the cleaning of sidewalks, registration or religious affiliation of his children at school as Anglican when no other church is mentioned, restrictions on the books and magazines he may read, how many children may play in his back yard, etc.—without ready access to the law itself and without the right of appeal on the basis of fundamental human rights. This fear of having some unknown portion of the law used against him keeps him from reporting other violations and hinders co-operation with law enforcing bodies. He says to himself “Don’t do anything—you might be the goat!”

2. Fear on the part of the average parent to say anything about the schools, teaching methods, etc. Example after example has been reported to me where parents have been rightly indignant over a disciplinary action or language used by a teacher. Upon complaint they have been advised to forget the matter. Friends with similar experience simply say to keep quiet for fear of reprisals on the children themselves. Such fears, whether real or unreal, have no chance where human rights are protected by a legal guarantee. They flourish where honesty is avoided.

3. Fear on the part of any new organization or an ethnic group of intimidation by local groups in power—be they political, professional, criminal or religious—is ever present. This brings about the continual splitting up and ever tightening of the inner circles—those who can be trusted. That his is not unreal is emphasized by statements such as; “Aren’t they presumptuous to be sending a brief to the Massey Commission?” The constant fear of “Red mud slinging” against those who do things contrary to the ideas of the power group give ample evidence for this fear. When there is no personal security inherent in the citizenship structure each person clings to the anchorage which appears most secure to him. This is most often his own tradition, holding his own people together but also alienating them from all others.

4. Fear on the part of civil service employees involving the loss of jobs because of non-political community activity is a live issue. I personally was subjected to this because of activity as program chairman of a Home and School Ass’n. The unwritten regulations and intimidations deprive many civil service employees of both their rights and obligations to the community in which they live. Those who should be the leaders in the inter-national movement toward greater local autonomy are not, unless they hold very high positions, encouraged or even permitted to take part.

5. Fear on the part of young people of any one in authority and the consequent loss of a sense of human dignity and value without any attempt at education in their own basic rights is a serious matter in any democracy. This fear is begun in the cultural environment of the neighbourhoods, continued and strengthened in the schools and thereby lays the foundation for continued conformity to the patterns of the past. Last Spring I asked the Simpson Collegiate group about the Universal Declaration. Not one in 150 had ever heard about it or read it! Thus the texts and the exposition of the teachers faced a problem which took up the better part of several years in the Human Rights Commission!

While these examples and groupings are brief, they strike at the very heart of human relations. They are so apparent, so simple and so common that we often overlook them. In taking the long view we may forget that the long view is undeniably tied to the present and must begin in the present both

with adults and with children. I believe that I am not overstating the facts when I say that hundreds of thousands of residents in the Toronto, area are controlled by conscious and unconscious fears which only a declaration of human rights, enacted into law, taught to all by every means of education, studied and practised can help to eliminate. Canadian citizenship is not yet the dynamic example which it ought to be in world affairs. Although many fine sentiments are expressed the modern tradition of finance and industry has taught us to distrust and to ask: "Where are the guarantees?"

"Knowledge and wisdom, glory and power responsibility and self-activity—these said the first historical Inca, should be for the elite alone. For the people there should be peace and security, *but no longer a local self-determination*. And when, in the great Inca century, the Indian genius flowered, as it did flower, the glory of it was for the elite alone. The Inca Sinchi Rocas 'thought did not reach on to foretell how, in an extreme hour of the peoples' and the rulers' need, the rulers would find the people unmoved to help their benefactors. He did not know that the people would have been impoverished through the usurpation of the rulers of all that makes strength of will, greatness of soul." John Collier, "Indians of the Americas, pg. 40 Mentor Books 35c.

Human rights which lead to responsibility must be guaranteed, *if* democracy is to live.

Respectfully submitted,

HUGO W. WOLTER.

346 Bloor Street E.
Toronto, Ontario.
April 20, 1950.

FELLOWSHIP OF RECONCILIATION

CANADIAN SECTION—VANCOUVER BRANCH

FRIENDS MEETING HOUSE—535 WEST 10TH AVENUE

May 19, 1950.

The Honourable Senator ARTHUR W. ROEBUCK,
Chairman, Special Senate Committee on
Human Rights and Fundamental Freedoms,
The Senate,
Ottawa.

Dear Sir: We were recently informed by the National Council of the Fellowship of Reconciliation in Toronto that they were sending a brief to the Special Senate Committee on Human Rights and Fundamental Freedoms, of which you are chairman, and we fully endorse this.

The Vancouver group wishes to express appreciation of the work being done by your committee and the hope that much good will follow this important undertaking.

Yours sincerely,

MAY TIMBERS,
(Miss) MAY TIMBERS,
Secretary. •

THE MONTREAL GENERAL HOSPITAL

66 DORCHESTER STREET EAST

Montreal 18,
15 April 50.

The Hon. Senator ROEBUCK,
The Senate,
Houses of Parliament,
Ottawa, Ont.

Dear Sir: I am instructed by the members of the Anglican Fellowship for Social Action, Montreal Unit, and the Society of the Catholic Commonwealth, Montreal, to submit to you the following statement in support of your introduction of a Bill of Rights in Parliament:

The Anglican Fellowship for Social Action, Montreal, and the Society of the Catholic Commonwealth, Montreal, affirm that the unique worth and value of the individual personality is declared by the will and law of God, and that its safeguarding is necessary to the life of our society.

We urge that this worth and value be proclaimed and guaranteed by enactment of a Bill of Rights by the Government of the Dominion, ensuring to every citizen, without respect of sex, class, race, colour, or creed, the basic rights and freedoms of conscience, opinion, religious belief, of person, and of equality before the law.

Yours very truly,

WM. E. POWLES, M.D.,
Vice-Chairman, AFSA.

THE DOMINION WOMAN'S ASSOCIATION OF THE
UNITED CHURCH OF CANADA

502 BATHURST STREET, TORONTO 4, ONT.

Carried Unanimously at the Annual Meeting of the Dominion Woman's Association Council of the United Church of Canada, in Session on May 16 and 17, 1950, in Centennial United Church, Toronto:

Whereas the Senate of Canada has established a special committee to study the matter of Human Rights and Fundamental Freedoms in Canada,

Whereas respect for and observance of Human Rights and Fundamental Freedoms is a cardinal principle of our Christian Faith,

Whereas there have been occasions in Canada where such rights and freedoms have not always been recognized,

Whereas a brief has been submitted to the Senate Committee by the Association for Civil Liberties, asking that a bill of Rights be written into our Constitution, which would more adequately protect the fundamental human rights of every person in Canada,
Be it therefore resolved:

That the Dominion Woman's Association Council of the United Church of Canada, go on record in support of this brief, and that appropriate governmental bodies be notified accordingly.

THE HENRY GEORGE FOUNDATION OF CANADA

138, OSSINGTON AVENUE, TORONTO 3, ONTARIO

Brief

To the Chairman and Members of the SPECIAL COMMITTEE OF THE SENATE ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

Gentlemen:—

The directors of THE HENRY GEORGE FOUNDATION OF CANADA wish to express to your Committee their approval of the effort being made to protect the human rights and fundamental freedoms listed in the Resolution of the Senate passed March 20th 1950.

We would wish however to direct attention to another fundamental right, implicit, it seems to us, in both Article 1 and Article 14, which must be given full recognition if the recognition of the right to life and the right to own property is to be effective. This is the right of access to the opportunities of nature, the natural resources, the national inheritance, on equal terms to all.

Implicit in the right to life is the right to a place on the planet on which to live or work.

This right is denied if a man must pay another man for the right to occupy a place to work or to live. If a man must pay another man for a place on the planet to live, that means the other man has a greater right to life. But the full right to life is recognized if the payment for a location on which to live or work is made to the state as trustee for all the people, and is in proportion to the value of the location occupied.

The right to own property, it seems to us, is also implicit in the right to life. It is the right of a man to his own life, to himself, and the products of his own labor.

If this right to own property is to be fully recognized, it is necessary to recognize also that the planet itself, and all its natural resources which are not produced by human labor, are not owned, are not property, but are a trust administered from generation to generation by government.

According to Lord Blackstone and other eminent British legal authorities this distinction between land and property has been recognized in British law since 1088. The highest title any British subject can hold to land is that of tenant or holder direct from the king as head of the state.

The first function of government in any settled community, we suggest, is to secure to individuals and groups peaceful occupation of locations for dwellings, for industry or for commerce. Peaceful occupation includes possession and enjoyment of things produced on the location or received in exchange for things produced, or by gift from those who have produced them.

To provide individuals and groups with peaceful enjoyment of locations governments maintain registry offices, employ surveyors, maintain courts, police and military establishments. The more valuable a location the more government service is required to protect the occupant. The annual value of every location is the value of the government services which make peaceful occupation of that location secure.

We would emphasize that payment to the government of the annual value of a location is payment for service rendered. It is not an arbitrary tax. Governments, like other corporations and like individuals, are best financed by collection of fair payment for services rendered; not, like burglars and highway-men, by arbitrary appropriations or demands which ignore the right of private ownership of the products of labor, of property.

We would therefore suggest the desirability of considering a further clause in Article 14, or elsewhere, to the effect that the natural resources of the country, including locations suitable for dwellings, commerce or industry, are a trust to be administered by government for the benefit of present and future generations.

Yours respectfully,

THE HENRY GEORGE FOUNDATION OF CANADA.

A. B. FARMER, *President*.

BRIEF PRESENTED TO THE SPECIAL COMMITTEE ON HUMAN
RIGHTS AND FUNDAMENTAL FREEDOMS BY THE
SASKATCHEWAN FARMERS' UNION

DEAR MR. CHAIRMAN AND MEMBERS OF THE SENATE:—

We welcome this opportunity to express our views on the subject of human rights.

In so far as this country is fundamentally, Christian and democratic, we believe in the brotherhood of man and that the fundamental rights of life, liberty and the security of person should apply to all people within our boundaries. While our constitution assures the people a voice in the governments, there are certain fundamental freedoms that minorities as well as majorities should be guaranteed.

We have seen in the history of other countries the barbaric waste of human lives and consequent loss to these nations, as a whole, of great minds and able bodies due to the persecution of minorities. If these freedoms are not set down as a matter of policy and strictly adhered to, we can not face the world and be truly regarded as a civilized country.

Therefore in the interests of the welfare of the Dominion, we present our suggestions on behalf of the farmers of Saskatchewan.

We agree with and support the proposals as laid down by the United Nations but feel that the broad principles necessary on an international level are not specific enough in some instances to enforce action on the actual problems within Canada.

After consultation with and examination of several authentic sources of information including careful study of the U.N. Declaration of Fundamental Freedoms and the Saskatchewan Bill of Rights Act we have formulated the following articles:

ARTICLE 1

Liberty

Everyone has the right to life, liberty and the security of person.

ARTICLE 2

Freedom from Slavery

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 3

Freedom from Torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 4

Recognition and Protection

Everyone has the right to recognition throughout Canada as a person before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law.

ARTICLE 5

Right to Remedy

Everyone has the right to an effective remedy by the competent national tribunals for Acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 6

Freedom from Arbitrary Imprisonment

(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

ARTICLE 7

Right to Habeas Corpus

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

ARTICLE 8

Right to Impartial Jury

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 9

Right to be Presumed Innocent

(1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 10

Protection from Personal Interference

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

ARTICLE 11

Freedom of Movement

Everyone legally resident in Canada has the right to freedom of movement and residence within the country and the right to leave and return to Canada.

ARTICLE 12

Freedom and Equality in Marriage

(1) Men and women of adult age, without any limitation with regard to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

ARTICLE 13

Right to Own and Occupy Property

Every person and every class of persons shall enjoy the right to acquire by purchase, to own in fee simple or otherwise, to lease, rent and to occupy any lands, messuages, tenements or hereditaments, corporeal or incorporeal, of every nature and description, and every estate or interest therein, whether legal or equitable, without discrimination.

No one shall be arbitrarily deprived of his property except in public interest and in such case be adequately recompensed.

ARTICLE 14

Freedom of Conscience

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in communion with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Unless it interferes with rights of others).

ARTICLE 15

Freedom of Expression

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 16

Freedom of Assembly

(1) Every person and every class of persons shall enjoy the right to organization of membership in and all of the benefits appertaining to membership in every professional society, trade union or other occupational organization without discrimination.

ARTICLE 17

Right to Vote and Use Public Services

(1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of authority of government. This shall be expressed by the people who will assume the responsibilities of citizenship and shall be determined by secret ballot in a free election at least every five years.

ARTICLE 18

Right to Employment

(1) Every person and every class of persons shall enjoy the right to obtain and retain employment without discrimination with respect to the compensation, terms, conditions or privileges of employment.

ARTICLE 19

Right to Engage in Occupations

Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination.

ARTICLE 20

Right to Access to Public Places

Every person and every class of persons shall enjoy the right to obtain the accommodation or facilities of any standard or other hotel, victualling house, theatre or other place to which the public is customarily admitted without discrimination.

ARTICLE 21

Right to Education

(1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination.

ARTICLE 22

Prohibitions Against Publications

(1) No person shall publish, display or cause or permit to be published or displayed on any land or premises or in any newspaper, through any radio broadcasting station, or by means of any other medium which he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment of any person or class of persons of any right to which he or it is entitled under law.

(2) Nothing in subsection (1) shall be construed as restricting the right to freedom of speech under the law, upon any subject.

149

Every person is entitled to all the rights and freedoms above set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150

Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151

The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled. In all cases the word "discrimination" shall refer to race, creed, religion, colour, ethnic or natural origin of himself or any such class of persons or any member of such class of persons.

These articles as we have presented them, honourable senators, should not necessarily be adhered to exactly as worded. It is our intention to present our suggestions in an orderly fashion and have you consider the implications of each article.

We ask special attention to be given to Articles 18, 20, 21 and the formulation of definite penalties to enforce this act.

All of which is respectful submitted.

G. ATKINSON, *Secretary*.

DEPARTMENT OF SOCIAL RELATIONS OF THE CANADIAN COUNCIL OF CHURCHES

A BRIEF ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS TO A SPECIAL COMMITTEE OF THE SENATE OF CANADA

Members

The Church of England in Canada
The Baptist Federation of Canada
The Churches of Christ (Disciples)
The Evangelical United Brethren Church
The Presbyterian Church in Canada
The Reformed Episcopal Church
The Ukrainian Orthodox Church
The United Church of Canada
The Salvation Army
The Society of Friends

Affiliated Members

The National Council of The Y.M.C.A.
The National Council of The Y.W.C.A.
The Student Christian Movement of Canada

Dear Mr. Chairman and
Members of the Special
Senate Committee:

On behalf of the Churches and religious bodies which are represented in the Canadian Council of Churches, we wish to congratulate the Senate on its establishment of this special Committee on Human Rights and Fundamental Freedoms.

From the motion which the Senate passed setting up your Committee, we understand that your task is to consider and report on the subject of human rights and fundamental freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada.

In subscribing to the United Nations Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948. Canada has undertaken to promote by progressive measures, universal and effective recognition and observance of human rights and

fundamental freedoms in its territory. These rights and freedoms we have accepted as moral obligations. We are now faced with the question as to whether we should accept them as legal obligations as well.

The Canadian Council of Churches is aware of the fact that any attempt to establish a Canadian Bill of Rights would raise certain constitutional questions between the Federal and the Provincial authorities. There is a lack of uniformity which can and does prevail in Canada in respect to these human rights and fundamental freedoms. This condition is brought about, in part, by the fact that Canada is a country in which the power to pass laws is divided between the Federal Government and the ten Provincial Governments, each of which is supreme in its own jurisdiction.

In a statement to the Third General Assembly of the United Nations, at Paris, in the Plenary Session, December 10, 1948, the Honourable Lester B. Pearson, Chairman of the Canadian delegation, made reference to this Canadian constitutional problem in the following terms. "The Subject under consideration (Human Rights and Freedoms) is in some of its important aspects within the field of provincial jurisdiction in Canada. I wish to make it clear that, in regard to any rights which are defined in this document, the Federal Government of Canada does not intend to invade other rights which are also important to the people of Canada, and by this I mean the rights of the provinces under our Federal Constitution. We believe that the rights set forth in this Declaration are already well protected in Canada. We shall continue to develop and maintain these rights and freedoms, but we shall do so within the framework of our constitution which assigns jurisdiction in regard to a number of important questions to the legislatures of our provinces."

With all due respect to the opinions expressed in the above statement, many persons in Canada are beginning to wonder whether or not some changes are needed in our present method of protecting human rights and freedoms in this Dominion. Many are led to question whether our laws are providing the individual Canadian with the protection they should, and whether certain well-known cases of infringement of fundamental human rights which have been possible in Canada in recent years demonstrate the need for the further protection which a Bill of Rights would provide.

Without ignoring or minimizing the constitutional problem which the introduction of a Bill of Rights would present, we venture to suggest that to the extent that our Constitution now provides guarantees for the English and French languages, the separate school system, and periodic elections and sessions of Parliament and the Provincial Legislatures, Canada already has the nucleus of a Bill of Rights. Therefore, in view of these facts, is it too much to ask that the Constitution be extended to take in the following suggested human rights and fundamental freedoms?

Article 1—Everyone has the right to life, liberty and the security of person.

Article 2—No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3—No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4—Everyone has the right to recognition throughout Canada as a person before the law.

Article 5—All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6—Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 7—(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8—Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Article 9—Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10—(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of an act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11—No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12—Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13—(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14—(1) Everyone has the right to own property alone as well in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15—Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 16—Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17—(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18—(1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

Article 19—(1) Every person is entitled to all the rights and freedoms above set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

(3) The above article shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

You will recognize that these articles are the same as those appearing in the motion establishing this Senate Committee. They are also to be found in the United Nations Universal Declaration of Human Rights. If these fundamental human rights, as outlined, were constitutionally guaranteed in Canada, the different governments in our country, as well as the courts and the private individual, would be bound by law to respect them. With the establishment of a Bill of Rights, every person in Canada would know, and not have to guess, what his or her fundamental rights are.

In the Church, we are not content with pleading for the recognition of human rights and freedoms; we are also prepared to give our reasons for so doing. We believe that all men are God's creatures, and, as such, they are of infinite worth in His sight. They have God-given rights which society must respect and for whose realization it must make provision. In many areas of the world these rights are denied or fall short of full acknowledgment. Every violation of these rights and freedoms is a denial of basic Christian principles. As followers of Jesus Christ, we cannot view this situation with unconcern. We insist that the right of individuals everywhere to the maximum degree of liberty consistent with democratic community should be acknowledged, and subject only to the maintenance of public order and security, should be guaranteed against legal provisions and administrative acts which would impose political, economic or social disabilities on grounds of race, religion or social status.

In the field of human rights and fundamental freedoms, the Church has not been silent nor inactive. For instance, in a statement received by the First Assembly of the World Council of Churches at Amsterdam, The Netherlands, August 22 to September 4, 1948, the Churches declared: "We affirm that all men are equal in the sight of God and that the rights of men derive directly from their status as the children of God. It is presumptuous for the state to assume that it can grant or deny fundamental rights. It is for the state to embody these rights in its own legal system and to ensure their observance in practice."

Regarding the question of Human Rights the Lambeth Conference of 1948 insisted that "the Christian doctrine of man is the true justification for the recognition of human rights. According to this doctrine every individual man is of supreme value in the sight of God, for he is made in the image of God, he is called to be a child of God, for his sake Christ died, and his heritage is life eternal. Every man must have freedom to respond to the call of God and be given opportunities whereby the whole of his personality may be fully developed to the glory of God. Without these elementary rights man cannot use completely the talents with which God has endowed him."

In Canada, in briefs which have been presented from time to time to the Prime Minister and the members of the Federal Cabinet, the Canadian Council of Churches has raised its voice on behalf of the individual, demanding his rights against the oppression of all unrestrained political or economic power. Such matters as Civil and Religious Liberty, the rights of Japanese-Canadians, Chinese immigration, and racial discrimination generally, have received our attention.

As Christians, we are prepared to support every honest endeavour to secure a Canadian Bill of Rights which will adequately safeguard the personal, social, economic and political rights of every citizen. We seek after and pray for a society in which freedom is the freedom of men who acknowledge responsibility to justice and public order, and where those who hold political authority or economic power are responsible for its exercise to God and to the people whose welfare is affected by it. We do not feel that it is the duty of our Council to propose the practical measures which might or should be taken to establish a Bill of Rights. Nor do we suggest that the wording of this brief is the final language which should be used to describe these human rights and fundamental freedoms in a legal document. We are convinced, however, that it is our duty and responsibility to declare that man, because of his worth in the sight of God, has rights which should be respected by all and safeguarded by law.

All of which is respectfully submitted on behalf of the Department of Social Relations of the Canadian Council of Churches.

H. E. WINTEMUTE,

FRED N. POULTON,
Secretary.

To:—The Joint Committee on Human Rights and Fundamental Freedoms.

From:—Wakunda Foundation, 346 Bloor St. E., Toronto.

Wakunda Foundation has made a very intensive study of some phases of Human Relations in Toronto and Suburban Areas. It has found that the basic problems of the people hinge on a definition of citizenship and what it means for them. It is difficult to explain the rights and freedoms of Canadians by means of an unwritten law. The majority of persons of British extraction in Toronto might place confidence in the unwritten law, but, it holds no safeguard for youth or for those of other than the predominating British extraction. Almost unanimously those groups want a Bill of Rights. Some new residents in Canada feel this lack keenly and question the advantages of Canadian citizenship without a guarantee of human rights. There is great support for a statement of human rights for Canadians but, in as far as Toronto is concerned, the old tradition of classes of citizenship prevents wide-spread support.

Example 1. Recently the Inter-Ethnic Citizens Council of Toronto, Inc., an organization representing nationality and ethnic groups worked with several Anglo-Saxons in the preparation of a brief to the Massey Commission. The brief was accepted unanimously by all groups, but when asked to prepare a supplementary brief, the majority refused, feeling that it was unwise for them to draw attention to themselves in this way. Their fear cannot be brushed aside as entirely groundless when one hears comment such as that voiced by the representative of a large civic organization who said: "Isn't it presumptuous of them to even think of submitting a brief?" The Inter-Ethnic Citizens Council of Toronto represents the democratic majority of 150,000 people: Ukrainians, Poles, Chinese, Japanese, Finns, Jews, Norwegians, Swedes, Danes, Hungarians, South Slavs, and Czechoslovakians.

Example 2. Youth groups have often caused trouble. Consider the matter from the point of view of the boy who said: "We have no rights at all. If a 'cop' just thinks we are doing something he drags us to the station and locks us

up. Do you blame us for hating them?" Inquiry of the Simpson's Collegiate Club in 1949 indicated that not one of the entire pick of the collegiate students had even read the Universal Declaration of Human Rights.

Example 3. A question of the rights of New Canadian arises, if, through no fault of his own a New Canadian becomes temporarily unemployed and receives public assistance. The Immigration Act provides the penalty of deportation in such circumstances. Although no case of deportation is recorded, the decision is up to the presiding judge in the citizenship hearing. There are no rights for anyone in a judge's personal opinion which may change from day to day and from one judge to another.

Although these are only three examples they represent the thinking of hundreds of thousands who are afraid to organize support for a Bill of Human Rights or who are prevented by tradition from doing so.

We, the Executive Board of Wakunda Foundation, urge the Special Committee on Human Rights and Fundamental Freedoms to take speedy action, although we know that public support cannot be expected from those who have learned by sad experience that it is not a wise policy to express themselves.

UNITED NATIONS SOCIETY

LETHBRIDGE BRANCH

6 Strathcona Court,
1237-4th Ave. S.,
Lethbridge, Alberta,

April 22, 1950.

Senator,
The Hon. ARTHUR W. ROEBUCK, K.C.,
Chairman, Committee on Bill of Rights,
The Senate,
Ottawa, Canada.

Dear Senator:

In a letter under date of April 19th from the Secretary of the Association for Civil Liberties it was suggested I should send to you, as Chairman of the Committee for a Canadian Bill of Rights, a brief or statement following any action this branch of our association might take.

Therefore the following resolution was passed unanimously by the Lethbridge Branch of the United Nations Association in Canada at a general meeting held yesterday, Friday, April 21st, and is being forwarded to reach you prior to the opening of your deliberations on April 25th next:

That the Lethbridge Branch of the United Nations Association in Canada go on record as favouring the writing into the Constitution of Canada a Declaration of Human Rights and that we endorse the draft Declaration presented by the Joint Parliamentary Committee.

A copy of this resolution will be on file at our head office on Ottawa and with the secretary of the Association for Civil Liberties.

Yours sincerely,

F. A. RUDD,
*Member National Executive Committee,
United Nations Association in Canada.*

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM
VANCOUVER BRANCH

1838 Western Parkway,
Vancouver, B.C.,

April 21, 1950.

Senator ARTHUR W. ROEBUCK,
Chairman, Special Senate Committee on Human Rights,
Parliament Buildings,
Ottawa, Canada.

Dear Sir:

The Women's International League for Peace and Freedom, an organization with consultative status to the UN Economic and Social Council and UNESCO, is keenly interested in the principles of the UN and the Universal Declaration of Human Rights now under consideration by the member states.

At a recent meeting of the Vancouver Branch of the WILPF, the proposed Canadian Bill of Rights was discussed and the members decided that the following recommendations be submitted to your Committee.

(1) That the establishment in Canada of a Declaration of Human Rights under law shall not be a modification of such rights as set forth in the Preamble and Articles of the Universal Declaration.

That the Canadian Bill of Rights shall be drawn up in such a manner as to fit within the framework of the Universal Declaration, except where amplification to suit the needs of the Canadian people be desired in order to ensure a greater measure of democratic freedom, thereby making for better co-operation internationally.

Since the personnel of the Commission that drew up the Universal Declaration may perhaps consist of representatives from "backward" countries as well as progressive nations, it may be that some progressive ideals have been sacrificed in the need for unanimous decisions, thereby making it advisable for a Canadian Bill of Rights to be an extension, but under no consideration a modification of the UN document.

(2) That the Rights of Civil Liberty must find an outstanding place in the Bill, with the Four Freedoms firmly established on a democratic basis as Canadian law.

(3) That sections of the Bill and the Rights outlined therein shall be drawn up in clear, unmistakable language to obviate the possibility of ambiguity, so that no interpretation other than stated in the Bill can be derived, or the clearly defined wording of any Article and its qualifying clauses be changed.

(4) That the right of organization and association for industrial workers coming under Federal jurisdiction shall be part of the Bill, and that those engaged in agricultural production shall also have the right of organization and association for producing and marketing their products.

(5) That persons migrating to Canada shall not be subjected to racial discrimination or political persecution, but shall enjoy full rights of citizenship, including political rights after naturalization.

(6) That Article Twenty-two of the Universal Declaration be studied by the committee drafting the Canadian Bill of Rights with particular regard to social and security measures becoming lawful rights where such fall within the jurisdiction of the Federal Government, and that those that are the responsibility of the Provincial Government be left until such time as the B.N.A. Act may be changed in this regard.

(7) That conscientious objectors against military service shall have the right to refuse such service and shall not be conscripted in the event of war.

We respectfully submit these recommendations to your committee in the belief that their acceptance and incorporation in a Canadian Bill of Rights would make for peace and security in our own country and amicable relations with other countries.

Yours truly,

(Mrs. S.C.) GLADYS MORGAN,

Corresponding Secretary.

TO THE SPECIAL SENATE COMMITTEE ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, The CIVIL LIBERTIES ASSOCIATION OF MANITOBA respectfully submits the following brief:

I

The basis on which the following recommendations are made is as follows:—

- (a) The conviction that human society can be maintained only if the human individual is conceived to be of inherent worth and dignity and possessed of rights consonant with the status of being an end in himself and not merely a means.
- (b) Regarded thus, the human individual has the attributes of morality and conscious intelligence, and has the right to be treated as such, that is, according to a law, and according to a process of reason.
- (c) The duty of the individual is to conduct himself in terms of the above conception; but where he fails to do so, and positive social sanctions are applied, he must be judged according to law and reason.

II

With the above in mind, we desire to call the attention of the Special Committee to the problem of what may be called "administrative law" in its effect upon human rights and freedoms. In certain cases the law gives a minister of the Crown power over the person or property of individuals; and the resulting situation is one in which, we contend, the individual is denied the rights set forth in Articles 1, 7, 8, 11 and 14 of the Draft Articles under consideration by the Committee.

The Right Honourable Lord Hewart of Bury, then Lord Chief Justice of England, wrote in 1929 (pages 5 and 6 of *The New Despotism*) the following:

"A little enquiry will serve to show that there is now, and for some years past has been, a persistent influence at work which, whatever the motives or the intentions that support it may be thought to be, undoubtedly has the effect of placing a large and increasing field of departmental authority and activity beyond the reach of the ordinary law. Whether this influence ought to be encouraged, or whether it ought rather to be checked and limited, are questions into which, for the moment, it is not necessary to enter. But it does at least seem desirable that the influence itself should be clearly discerned, that its essential nature and tendency should be quite plainly exhibited, and that its various methods and manifestations should not be allowed to continue and multiply under a cloak of obscurity. The citizens of a State may indeed believe or boast that, at a given moment, they enjoy, or at any rate possess, a system of representative institutions, and that the ordinary law of the land, interpreted and administered by the regular Courts,

is comprehensive enough and strong enough for all its proper purposes. But their belief will stand in need of revision, if in truth and in fact, an organized and diligent minority, equipped with convenient drafts, and employing after a fashion part of the machinery of representative institutions, is steadily increasing the range and power of departmental authority and withdrawing its operations more and more from the jurisdiction of the Courts."

We would draw the attention of the Special Committee to the very great significance of the last sentence in the above quotation. Whatever may have been its aptness as a description of conditions in 1929, the time of writing, it was certainly prophetic of a tendency in both Britain and Canada which has reached extreme proportions at the present time.

III

We desire to urge upon the Special Committee of the Senate that in view of the above tendency there is need for a careful consideration of the meaning of the word "arbitrary". Obviously the word cannot mean the personal act, unsupported by law, of a minister or his deputy. This would be sheer disorder, a condition neither envisioned nor implied by the articles on human rights. Therefore the word "arbitrary" must have a meaning within the context of a system of organized society, and in relation to law.

We submit for the consideration of the Special Senate Committee that an act is arbitrary, no matter what legal authority may be behind it, if it violates section 39 of Magna Carta, viz:—

"No freeman shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land." (Commentators, aided by section 56 and also by the writ *Rotuli Litterarum Patentium* 1215, interpret the word "or" as meaning "and".)

Therefore we suggest to the Special Committee that "arbitrary" should be interpreted as meaning any case in which a human being is deprived of life, liberty or property without due process involving first a charge of the violation of the law, thereafter established to the satisfaction of a judge or jury or magistrate in proceedings regularly instituted in one of the courts of Justice.

A prime example of administrative law applied to the person occurred in the summer of 1949. The Immigration Department arrested and held a displaced person on the allegation that he entered Canada illegally. The Board of Enquiry which investigated the allegations was not held under conditions which would constitute in form or actuality a judicial process. This man was under arrest and was detained in a common gaol for an indefinite period. The period of detention was prolonged by political expediency, since the Government facing an election desired to avoid alienating factions in the ethnic group to which the man belonged.

The most important element in the above situation was the fact that having made application for a writ of Habeas Corpus, the prisoner was refused the writ on the grounds:

1. That the gaol had been designated an immigration station.
2. That the ministerial act, though admittedly not judicial, was legal.

We submit that although the act was legal it was arbitrary, since the loss of liberty was not based on a judicial decision but on an administrative act. We are not of course attempting to judge whether or not the allegation of illegal entry was correct. The brief mention of this instance is intended merely as an illustration, and any explanation or defence of the action does not affect the principle we advocate, namely, that no individual should be deprived of life, liberty or property without judicial process.

IV

The Civil Liberties Association of Manitoba desires to express approval of the provisions contained in the Draft Articles, and respectfully requests the Special Senate Committee on Human Rights and Fundamental Freedoms to give sympathetic consideration to these provisions and to any means by which they may be more certainly assured to all persons in Canada. It would especially direct the attention of the Senate Committee to the problems in this connection raised by the growth in Canada of administrative law, and would suggest that a careful consideration of the meaning of the term "arbitrary" might point to their solution, on the principle that no person in Canada may be deprived of life, liberty or property without due process as defined on page three of this brief.

All which is respectfully submitted by

THE CIVIL LIBERTIES ASSOCIATION OF MANITOBA,
per David Owen, *President*.

182 Mayfair Avenue, Winnipeg, Manitoba.

THE UNIVERSITY OF BRITISH COLUMBIA
VANCOUVER

Office of the President

April 21, 1950.

Dear Senator ROEBUCK:

Herewith the memo I promised to send you. I'm sorry I cannot be with you. I will be interested in learning the results of your efforts.

With all good wishes.

Sincerely,

NORMAN MacKENZIE.

En route, April 21, 1950.

Dear Senator ROEBUCK:

I wish to acknowledge your letter of April 12, in which you invite me to appear before the Committee of the Senate appointed to enquire into and report on the subject of Human Rights and Fundamental Freedoms. I am greatly honoured that you should have thought of me in this connection and I wish it were possible for me to accept your invitation, for I am very much interested in this question. Unfortunately, as I have just left Ottawa where I have been sitting as a member of the Royal Commission on the Arts, Letters and Sciences, and am on my way back to Vancouver, it will be impossible for me to be in Ottawa on the days you suggest. However, it may be in order for me to set down one or two thoughts or suggestions that occur to me about this matter.

In the first place, I do not believe that any act of Parliament or system of laws, however wisely or carefully drafted, will of itself achieve the objectives which you and I have in mind. Tolerance and respect for the rights and feelings of others are a matter of education and training and are dependent upon our own attitudes and feelings towards other individuals and groups who differ from us in important respects. In stating this, I do not mean to imply that your proposal for a fundamental law is not important—it is. I do mean that if it is to be effective it must be accompanied by and, where possible, preceded by a continuing campaign to educate our people and particularly our children about such matters. In this connection the effect of practical examples of tolerance of and respect for others cannot be overestimated.

If we, in our own behaviour, are tolerant and decent in our attitudes toward others, and if we have a proper respect for their rights and feelings, our young people are likely to be more impressed and influenced by our behaviour than by anything else we can do or say or write.

A second point of a general nature that I would like to make is as follows. In our desire to ensure justice and fair treatment for everyone we should not ignore or forget the fact that people do differ from each other, both temperamentally and in physical appearance. This means that those with similar likes and attitudes should not be prevented from joining with others of similar likes or temperaments to further their mutual interests. Nor should they be forced to belong to groups in which they are uncomfortable and do not feel at home. You will understand what I am driving at.

Some people are liberal, others conservative by nature or disposition; some are young, others are old. Some like noisy flashy entertainment; others prefer something quieter and less ostentatious; and all of these differences will have to be kept in mind. The main thing is to see that they are given the freedom to go their own ways and be the kind of people they want to be, provided they do not interfere with the rights and interests of others.

And now for one or two more practical or specific suggestions. Had you thought of having a study made of the rights and freedoms which we now possess, and whether they are set out in statutes, in the common law or are a matter of custom and practice? Then along with this should go a study of the complaints that have been made, or the abuses which exist, together with requests or suggestions for improvements or changes in the existing practices or laws. It may be that if your committee does not have the time to make this study, it could be turned over to the Canadian Bar Association and the Canadian law schools for study and report.

The subject of Human Rights and Fundamental Freedoms is connected with nationality and citizenship, in that I do not believe we can have or should have different types of citizens or citizenship. I have in mind the restrictions or limitations legal and professional which exist and have existed in respect of Asiatics, North American Indians, Esquimos and possibly others. I think I know some of the reasons for these discriminations or differences in treatment, and these reasons may be good and proper ones—though I doubt it—but in any event they should be removed or abandoned as quickly and as completely as is wise and possible. Everyone who is a Canadian should have the same rights and responsibilities, subject to differences due to sex, age, etc.

As some matters under this head—Fundamental Rights and Freedoms—will no doubt come under or be affected by the provincial jurisdiction over property and civil rights, education and other matters, it would be well to consult the provinces about any proposed legislation or action. All of this will have an educational effect in any case.

I have read the draft articles which accompanied your letter. They are most interesting and I have no comments to make except the following:

- (1) You might consider dropping *national* before *tribunals* in article 6.
- (2) Is penal as good as criminal in article 10?
- (3) In article 14 (2), should mention be made of expropriation proceedings?

There are certain other modifications which occur to me in respect of the language of this draft, but I am sure they will occur to the members of your committee and in any event they are not important.

I hope that what I have set out above may be of some slight interest. I will be grateful, too, if you will convey my regrets to the other members of your committee.

I am, yours sincerely,

NORMAN MacKENZIE.

*Draft of Brief of the Fellowship of Reconciliation to the Canadian Senate
Committee on Human Rights and Fundamental Freedoms*

The Canadian Fellowship of Reconciliation is much interested in the setting up of the Senate Committee on Human Rights and Fundamental Freedoms. It is of the opinion that the consideration of this question should be undertaken keeping in view the world-wide implications of such human rights and fundamental freedoms. We are therefore, pleased to note that the specific articles which form part of the "terms of reference" of the Committee follow very closely those which were approved by the United Nations and known as the Universal Declaration of Human Rights.

It seems unnecessary to set out anew these specific articles, assuming that these will be found generally acceptable to the Canadian people.

The Canadian Fellowship of Reconciliation has been concerned about a number of incidents in Canada which have violated the purpose and spirit of the Universal Declaration of Human Rights. In particular, we wish to cite...

(1) The plebiscite which took place in Dresden, Ontario, calling for segregation of people of the Negro race and which had particular reference to the use of public places such as restaurants.

(2) The treatment of members of the religious body known as Jehovah's Witnesses.

(3) The forbidding of meetings in places suspected of being used for Communist gatherings, and the refusal to consent to the use of public buildings for public gatherings on the grounds that the meetings are for the dissemination of Communist doctrine and propaganda.

(4) The arbitrary arrest on suspicion of people thought to be implicated in dealing with the country's enemies during wartime.

(5) The forced evacuation under stress of a national emergency of Canadian citizen of the Japanese race, and Japanese nationals from the Coast Areas of British Columbia.

(6) Racial discrimination through the use of restrictive covenants in real estate dealings and in business and other ways.

The Fellowship of Reconciliation believes that in all such declarations, principles and motives that are truly Christian will be found adequate to deal with the problems involved. Accordingly, we believe that it is in the interest of humanity as a whole and of the Canadian public that there should be in the statutes of every country of the world, legislation which will accord to each human being the rights which have been so well set out in the documents referred to above.

It is the purpose of the Fellowship of Reconciliation to attempt to bring to areas of contention something of the spirit and love of Jesus Christ, believing that this encourages the reconciling of conflicting parties and the permanent solution of their disputes.

MILDRED FAHRNI,

Secretary,

11 Carlton St., Toronto.

BRIEF TO THE SPECIAL SENATE COMMITTEE ON HUMAN RIGHTS
AND FUNDAMENTAL PRIVILEGES SUBMITTED BY THE
INDIAN ASSOCIATION OF ALBERTA AND LEAGUE OF NATIONS
PAN-AMERICAN INDIANS

JOHN LAURIE,
Secretary,

*Indian Association of Alberta
Canadian Organizer, League of Nations
Pan-American Indians.*

Mr. Chairman, Honourable Senators:

The members and supporters of the two organisations submitting this statement to the Special Senate Committee on Human Rights and Fundamental Privileges are grateful for the opportunity of bringing to your consideration some of the many problems which confront our people today. We hope and pray that our statements will receive consideration from the honourable members of the Committee so that, from your deliberations, there may come a better understanding between our peoples.

The Indian Association of Alberta in its present state has carried on work for the betterment of conditions among the Treaty Indians of Alberta. The organisation consists of Chiefs, Councillors, and Band Members of both sexes over 18 years of age. Its average annual membership is about 1,500 of whom all are Treaty Indians, except the writer, who has the privilege of serving as Secretary to the Association since its inception. Our membership includes Chipewyans from Cold Lake-Legoff in north eastern Alberta, Crees from Kehewin, Frog Lake, Saddle Lake, Goodfish Lake, Stony Plain, Michel, Alexis, Paul's Band, Alexander of the Edmonton Superintendency; Driftpile, Sucker Creek, Kinuso, Sturgeon Lake, Whitefish Lake of the Lesser Slave Lake Superintendency; Red River, Ft. Vermilion, Tall Cree, Tall Cree Prairie of the Ft. Vermilion Superintendency; Ermineskin, Samson's Louis Bull, Mameo Beach and Montana of the Hobbema Superintendency; Sunchild, Bighorn, Morley, Eden Valley, Sarcees of the Stoney-Sarcee Superintendency; Peigans of the Peigan Superintendency; Bloods of the Blood Superintendency; and Blackfeet of the Blackfoot Superintendency. It has an annually elected group of officers and holds an annual general meeting at one of the reserves. From this general annual meeting, resolutions are forwarded to the officials of the Indian Affairs Branch, Department of Citizenship and Immigration, to the Department of National Health and Welfare, to various members of the Senate and the House of Commons, and to field officers in the Indian Service.

The Treaty Indians of Alberta base their Rights and Fundamental Privileges in a series of Treaties, Nos. 6, 7, 8, principally negotiated at various dates from 1876 to 1942. We regard these Treaties as binding on both His Majesty's Government in Canada and the various Bands of Treaty Indians. It is our plea that these treaties be honoured for all time; it is our belief that any change in the status of the Treaty Indian is a breach of Treaty and an infringement of the human rights stated therein. Moreover, we believe that the terms must be interpreted in the light of modern needs which have radically changed since the treaties were negotiated but the basic principles laid down in the treaties were intended to be so interpreted.

On Monday, April 21, 1947, our delegation presented its Brief to the Joint Committee of the Senate and the House of Commons as set out in No. 12 of the Minutes and Proceedings of that Committee.

We submit that the recommendations of that Committee contain several definite terms completely at variance with the expressed wishes of the Treaty Indians, not only of this Province of Alberta, but of those of other provinces as well.

We cite specifically:

1. A recommendation that a Federal vote without diminution of existing Rights and Privileges be given to the Indians.

2. A recommendation that the right to consume intoxicating beverage in licensed premises be extended to the Indians.

3. A recommendation that, in effect, means a diligent search of the membership rolls of Indian Bands with a view to forming a basic list which, in turn, means probing into the family history of each and every member to determine whether he may not be expelled from membership in order to meet the increasing population and eventual limited area of the reserves.

We propose to enlarge upon these and other points which we believe are detrimental to those rights and privileges derived from the Treaties.

PART I—The Maintenance of Indian Treaties

Article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The Indian Association of Alberta maintains that the treaties recognized the right of the Indians to territorial compensation for the surrender of lands lying outside the reserves. The treaties were negotiated between representatives of Her Majesty Queen Victoria and the Indian people. This statement is repeatedly made by Lieut.-Governor Morris and other representatives of the Crown in treaty negotiations. (Treaties of Canada by Morris).

The same Treaties recognized the right of Indians to education, medical service, and maintenance in times of need.

We submit that the Indian Act has superseded the Treaties without the consent of the Indians in that it has:

1. Given to the Superintendent-General (Minister) arbitrary and dictatorial powers to override the wish of the Indians in all matters.

2. Deprived the Indians of any administrative powers over their own trust funds, reserves and assets of the reserves, should the Superintendent-General so wish.

3. Contravened the Treaties by requiring the Indians to use their own trust funds (where such trust funds exist) for a meagre subsistence ration to the aged, destitute and other unfortunates without extending to the Indians the complete benefits of such social services as Old Age Pensions in so far as these are paid by the Federal Government. At present the aged or destitute Indian receives rations from his Trust Funds where such funds exists, and \$8.00 monthly as an emergency payment from the Federal Government, medical attention where desired and needed but far from being adequate. We submit that the Province of Alberta supplies to its aged and destitutes the same medical services, and dental and ocular treatment in addition. The band supplies the aged and destitute with housing in most cases and this has a certain value.

4. Infringed the spirit, if not the letter, of the treaties when it has allowed provincial administrations to obtain through Order in Council, powers to limit the right of hunting, trapping and fishing on unoccupied Crown lands.

We verily believe that the spirit of the treaty was to interpret the various services in the light of changing needs and conditions and that the administration has also created a precedent of which we fully appreciate the value.

Article 8 of the Universal Declaration states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by-law.

The Indian Act by empowering the Superintendent-General (Minister) with arbitrary powers, has contravened this article. Such contravention is most evident in the matter of Band Membership.

Again, the Treaty Indian is a minor in the eyes of the law and considered incompetent to act for himself EXCEPT WHEN HE HAS MADE HIMSELF LIABLE UNDER A BREACH OF LAW. That is, he cannot, however competent, legally enter into any contract or transact any business without written authority from his Superintendent or other officer upon his reserve. But when he becomes liable under any law, even a breach of traffic regulations, the Superintendent-General does not supply legal counsel for his ward.

We submit that competent Indians should be allowed to transact personal business without written authority. At the same time, he should be prepared to assume responsibility for payment of debts incurred under any sort of contract. He should be prepared to forego credit supplied from his trust funds except in case of such emergency as may be recognized by the municipal law of his province—for example, relief in times of distress, seed grain in the event of crop failure, etc. In any event, he has to repay such debts as seed grain, threshing, twine, etc., under the present system.

We stress that gradual assumption of such responsibility should be at his own request only, and never forced upon him by regulation. This, we believe, will in time create a competency which cannot become part of his character in any other way.

PART II—*Hunting, Fishing and Trapping—Articles 11 (2), 25 (1)*

The right to hunt was granted Indians under the Articles of Capitulation 1760, the Treaty of Paris 1763, the Treaties of 1876 and 1877 and was later recognized in 1890 when an attempt to enforce Game Ordinances against Indians was brought up and the then Minister of Justice disallowed it. Again, in a case in the Alberta Court of Appeal, *Rex vs. Wesley* (1932) 2 W.W.R. the judges found that game ordinances did not apply to Treaty Indians while hunting for food as distinguished from game.

By Order-in-Council 2150, April 28, 1949, the right of Indians to fish for food was restricted to one day a week in the Province of Alberta. This Order-in-Council was passed, we believe, at the request of the government of the Province of Alberta. A protest to the Honourable the Minister of Fisheries brought no alteration of this order; protests to the Honourable the Minister of Lands and Forests (Alberta) brought no results; a protest in the House of Commons by D. S. Harkness, M.P. (Calgary East), December 9, 1949, has still brought no results. This coming summer will see real privation among many of the Treaty Indians of Alberta, for fish is, on many reserves, the main source of summer food. This will prove expensive eventually to the Federal Government. Worse, it may deplete the Indians' trust funds gradually by necessitating supplementary rations of meat.

At the present moment, certain Indians from the Saddle Lake Reserve, exercising their right to hunt for food on unoccupied Crown Lands, find themselves charged under the Game Act of this province, in a test case to determine the sex of the animal they may shoot for food.

We submit that starvation by legislation is striking at a fundamental human right. We submit, further, that these attacks upon Treaty rights are the action of so-called "sportsmen's organizations" who in their brief to the Joint Committee

of the Senate and the House of Commons advocated, in effect, that Indians be deprived of ALL hunting rights except in the open season. We believe that, inasmuch as the white man shoots for sport, he is the one who should have closed seasons placed upon him. Any hungry Indian has a greater right than a sportsman who can buy his meat in a butcher shop.

PART III—Band Membership—Articles 3, 5, 7, 8, 10, 15.

An Indian is whatever the ever-changing policy of the administration in power at Ottawa may determine. After all, Section 18 of the Indian Act distinctly states: "The Superintendent-General (Minister) may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band" and goes on to state that the Minister's decision shall be final and conclusive, subject to an appeal to the Governor in Council.

Section 16 (2) of the same Act states: "No half-breed head of a family except the widow of an Indian or a half-breed who has already been admitted into a treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent-General (Minister), be accounted an Indian or entitled to be admitted into any Indian Treaty."

But the Superintendent-General changes with every administration; depressions and other factors seem to alter the policy. Who, then, has that security which should be the right of every inhabitant of a civilized and democratic country? Certainly not those who have "under the very special circumstances determined by the Superintendent-General."

In a report dated May 31, 1901, to the Honourable Clifford Sifton Minister of the Interior, Scrip Commissioner J. A. J. McKenna states: "Everyone irrespective of the portion of Indian blood which he may have, who enters treaty becomes an Indian in the eye of the law and should therefore be treated as an Indian, both by the Department of the Interior and the Department of Indian Affairs." This report was confirmed by Order-in-Council P.C. 1182. Again, as late as 1921, when Treaty No. 11 was negotiated, the report of the Committee of the Privy Council, embodied in P.C. 1172, contains this: "The other half-breeds in this country consisting of approximately seventy-five families mostly living the Indian mode of life, it is anticipated will, in their own interests, be taken into Treaty."

That there have been abuses of Section 16 (2) we do not doubt. That is not the point. The point is: that those who have been admitted at various times by officials of the Indian Affairs Branch should be secure in their status and in the status of the descendants, subject only to their own wish to become enfranchised and assume white status.

Some years ago an expulsion of almost wholesale proportions took place in the Lesser Slave Lake and Peace River regions and some of the cases seem to be questionable from an ethical standpoint. Certainly they were legal under existing legislation, but when one considers the statements above, they seem to indicate a radical change in policy. Certainly they displaced many persons who had considered themselves as Treaty Indians. Some of these were of an advanced age and would find rehabilitation difficult. Again, many children were deprived of medical and educational opportunities for no one any longer had any responsibility for their welfare. The displaced persons were not immediately eligible for residence in the Metis colonies established by the Provincial government. Of course, they could camp on the roadside until they were prosecuted for trespass; they could subsist as best they might. The legal aspect had been satisfied.

However, there was some protest strong enough to induce the Indian Affairs Branch, or the Department of Mines and Resources, properly speaking, to hold an investigation. Mr. Justice W. A. Macdonald of the Alberta Supreme Court headed the committee with counsel to represent both Department of Mines and Resources and displaced persons. But, oddly enough, little or no action was taken to reinstate persons recommended for reinstatement and the report, apparently concurred in by the Counsel for the Department, was made public only some five years later when the Indian Association of Alberta had, without funds, done its best to bring the report to light. This report may be found in No. 12 Minutes and Proceedings of the Joint Committee of the Senate and the House of Commons, April 21, 1947. (Obtainable from the King's Printer, Ottawa).

One instance is well worth quoting. A young man, recognized as the member of a Band since birth, educated in the Indian Residential School, a good farmer, married and with a small family was expelled from membership. The official from the Indian Affairs Branch based the expulsion largely upon rumours of 33 years before; he took an affidavit from an aged and palsied Chief, without English, through an interpreter who had only a smattering of English and certainly no knowledge of legal terms; by one of the greatest feats of "complete recall" as the psychologists say, this old man was able to swear that he recalled that 33 years before this boy was fathered by an itinerant trader, and not by the Treaty Indian who claimed that the boy was his own son. The Honourable Justice ruled that the young man in question was legitimized by the subsequent marriage of his parents and was entitled to Treaty privileges. The young man was expelled. This illustrates that the will of civil servants overrules the recommendation of a Justice of the Supreme Court. A very interesting point of law, indeed.

Again, Section 2 ((d) (111) seems to state quite clearly that "Indian" means any child of any male person of Indian blood reputed to belong to any particular band. One individual, placed in Treaty at birth by a Treaty Indian father, was recognized for about 45 years as an Indian. His parents lived together under common law for more than 20 years. But the father, unfortunately, had a legal wife in Manitoba and the mother had taken scrip before his birth. The man was expelled and all his family transferred to white status. We believe that the words "any child of any male person of Indian blood reputed to belong to any particular band" were not interpreted literally. Is not "any child" a term wide enough to cover illegitimates?

To explain the term "scrip" used here, one may state that in the late 1800's, at the time of the Treaties and thereafter, many persons, Indian and mixed, were given the opportunity to choose a certificate entitling the head of the family to select a portion of Crown Lands instead of Treaty. What became of this scrip none knows. Is it too fantastic to suppose that white land speculators secured most of it for a pittance and the holder was allowed to go on living on the reserve among the Indians as he had always done?

Yet a letter from Scrip Commissioner J. A. J. McKenna to the Honourable Clifford Sifton, May 1, 1901, states: "You decided that Halfbreeds living on reserves as Indians should be given treaty instead of scrip. . . . It seems to me undesirable that there should be upon reserves any but Treaty Indians. The Department has in the past taken back many Halfbreeds who received scrip and has held back their annuity until the amount of the scrip was recouped."

We do not advocate a wholesale inclusion into Treaty of persons accustomed to live outside the reserves or even those expelled who are willing to continue as white status.

We do advocate that any doubtful cases, especially those of second and third generation, who are at present included in the membership of any Band, be undisturbed. Band lists as at say April 1, 1950, should remain inviolate.

Secondly, we do advocate that all officers in charge of reserves take immediate and effective action to remove from the reserves all legally married women living at present in a common law status with a Treaty Indian. This entails an insistence that all provincial governments be asked to assume their responsibility towards these women and their children of various non-Indian parentage. There are instances of legally married women of white status acquired through marriage living under such conditions.

Failing to take the action we have indicated, the Indian Affairs Branch must be required to assume full responsibility for these women and children, place them on Treaty lists, provided that the Chiefs, Councils and Bands concerned are agreeable by a majority vote by secret ballot, to accept them as members of the Band.

Lastly, we advocate that in all moral justice, all Chiefs, Councils and Bands be given full charge of all future admissions to Band membership so that the arbitrary powers over membership and policy at present vested in the Superintendent-General (Minister of Citizenship and Immigration) be curbed. Such powers are completely incompatible with this day and age. Let us concern ourselves less with the plight of the Indonesians or any other groups abroad and do justice to the persons within our own country.

Those Bands presenting briefs to the Joint Committee of the Senate and the House of Commons throughout 1946-47-48 advocated that Band Membership was the responsibility of the Chiefs, Councils, and Bands. Such a glaring disregard, by the Indian Affairs Branch, of human wishes is incompatible with the day and age in which we live. So much needs doing on the reserves throughout Canada before any form of enforced voting, admission to licensed premises or genealogical investigations that all officers of the Indian Affairs Branch can be fully occupied. Housing, health, education, development of reserve resources, protection of Treaty rights, welfare work of all kinds are infinitely more necessary and essential to the well-being of the Indians than quibbling over who one's grandfather was.

"The right of the individual to his nationality" should not be alienated. Similarly, his right to freedom from cruel, inhuman or degrading treatment, the right to a fair and public hearing and representation by counsel, all are contravened by the Indian Act as at present enforced by the Indian Affairs Branch.

Part IV—Maintenance of Indian Status—ARTICLE 15

Deriving their rights and privileges from the various Indian treaties; the Indians of Alberta are opposed to having a vote in Federal elections, Provincial or Municipal elections forced upon them by legislation. This is a matter to be decided solely by the Indians themselves. Their feeling is:

1. Such a vote would constitute a violation of Treaty Status, and as such would imperil their present system of medical attention, education and the existence of the reserves themselves. There has been a constant limiting of treaty privileges throughout the years; hunting, fishing, trapping, are being diminished by the provinces, by federal legislation such as the Migratory Birds Act, and by pressure groups of sportsmen. Precedent has shown that Indian rights are constantly challenged. Some Bands are under pressure from Departments of the Federal Government, National Defence for example, to lease lands which are genuinely needed for expansion of their cattle herds.

2. Indians are not yet well educated; they have never been encouraged to take an interest in political affairs. Too few can speak, understand,

read or write English. Under such conditions a ballot is the most useless thing on earth.

3. Practically speaking, the Indian population is too diffused to be of political importance. Indians are still too shy and inexperienced to be subjected to political campaigns.

4. Until discrimination against the Indian socially, economically, educationally, and racially can be removed, the reserve must be preserved intact as a refuge for a long-suffering people.

To be forced to vote against their will would be another sad chapter in Indian history. Nothing can be gained; all may be lost.

Part V—Liquor—ARTICLE 25

The Indian Association of Alberta rejects the recommendation of the Joint Committee that Indians be permitted to consume liquor in licensed premises. To propose such legislation in the face of the poverty of most reserves, the still inadequate financing of Indian education, the undeveloped reserves, lack of adequate social benefits, is almost incredible. Our members maintain just such legislation is again a contravention of the treaties which expressly deal with this matter.

Besides this most serious aspect of treaty contravention, such a move will merely enable the less strong-willed Indians to pay more fines and serve more jail sentences. It is equally serious to legislate a people into degradation, poverty and destitution.

Part VI—Free Election of Chiefs—ARTICLE 29

We maintain that all chiefs should be elected for a three-year term only. They should be elected by secret ballot, instead of show of hands or merely signing of names. All electors of the Band, men and women, should have the right to vote for Chief and Councillors.

Present life chiefs might run for the elective office if they wish; they might also become honorary members of the Band Council, but in an advisory capacity only and without vote in council.

Moreover, the present honoraria of a suit every three years, and fifteen to twenty-five dollars annually must be increased to compensate them for loss of time. Municipal elected administrators are paid in varying degree; so should Chiefs and Councillors, if the best men and the most competent are to be induced to offer their services to the Band. Such salaries or honoraria should be paid from the general revenue of the Federal Government not from Band and Trust Funds, until such time as the administration of the reserve is purely democratic and within the powers of the Chiefs and Council.

Part VII—Education—Article 26

While the facilities for education have increased very satisfactorily during the past few years, much still remains to be done and the Indian Association of Alberta subscribes fully to the content of Article 26 of the Universal Declaration.

We urge the extension of day schools where possible, under properly certificated teachers.

Where residential schools are still the best means of educating the Indian child, we believe that less emphasis should be placed upon work and more upon education. Education in the residential schools is not really free because the per capita grants paid to the schools are not sufficient to provide the ordinary services of such an institution. We also interpret Article 18 of the Universal Declaration to mean that those children whose parents are classed as "pagan", i.e., adhering to aboriginal beliefs, should not be denied the right of education in a suitable residential school. We believe Article 19 is also closely related to this.

Part VIII—General Policy

We can subscribe to practically every article of the Universal Declaration except those which would constitute a contravention of the treaties. We do believe that there should be a policy of public education which would remove any discrimination of any kind against the Indian people. This cannot be done entirely by the Indians themselves. It would require access to sources of publicity beyond their means. With the facilities of the CBC and the national publications open to suitable organizations, groups or individuals such a campaign against discrimination could easily be undertaken. To allow development at a reasonable pace, responsibility must begin on the reserve. All rights must be protected as they now exist, but gradually a policy of less dependence upon officialdom for decisions must be inaugurated. The people must be encouraged to plan and to carry out projects on their own initiative. Economic means must be provided to enable them to carry out these plans. Training in self-government must be extended so that decisions are not unduly delayed.

Part IX

With reference to the activities of the League of Nations Pan American Indians, this international organization with which the Indian Association of Alberta is affiliated, gives complete local autonomy to affiliated groups. It might also be stated that among its supporters are such groups as some of the Six Nation groups in Eastern Canada. Special attention should be given to the preservation of their rights under the Declaration of George III. Their problems are not the problems of the western Indian. Again, with reference to the Sioux Indians in Manitoba, economic aid through the revolving loans should be extended to these people as long as they are resident in Canada. They are not, of course, Treaty Indians but they are resident here just as some western Cree Indians have been for many years resident in the state of Montana and are provided for by the American Government.

This, gentlemen, concludes our brief to your Committee.

JOHN LAURIE.

A CANADIAN BILL OF RIGHTS

(A resolution passed by the Board of Social Service and Evangelism of the Baptist Convention of Ontario and Quebec, on Tuesday, May 2, 1950.)

Whereas we believe that all men are God's creatures and as such are of infinite value in His sight;

And Whereas we insist that the state must respect and make provision for the realization of man's endowment;

And Whereas in recent years there have been in Canada infringements upon the fundamental rights and freedoms of the individual;

And Whereas at this time a Special Senate Committee has been appointed to consider and report on the broad subject of human rights and fundamental freedoms:

Be It Resolved that the Board of Social Service and Evangelism of the Baptist Convention of Ontario and Quebec urge the Special Senate Committee to recommend the establishment of a Bill of Rights which will insure, so far as legal enactment can, the rights and freedoms of every Canadian citizen;

And Be It Further Resolved that while favouring the principle underlying the proposed Bill of Rights, we refrain from stating specifically the terms of the enactment.

COMMITTEE ON GROUP RELATIONS IN CANADA
COMITE DES RELATIONS ENTRE GROUPES AU CANADA

Joint Planning Commission
Canadian Association for Adult
Education
340 Jarvis St.
Toronto 5, Ont.

Commission Permanente
Société canadienne d'enseignement
postscolaire
2, rue de l'Université
Québec, P.Q.

MONTREAL, May 4, 1950.

Hon. Arthur ROEBUCK,
Chairman, Special Committee on Human
Rights and Fundamental Freedoms,
The Senate,
Parliament Buildings,
Ottawa, Canada.

Dear Senator ROEBUCK:

Our Committee was created in 1947, by people of tolerance, for the purpose of fostering harmonious relations between ethnic and cultural groups throughout Canada. Being concerned, by its very nature, with any concerted move designed to bring about better understanding, it has welcomed the nomination of the Senate Committee on Human Rights and Fundamental Freedoms. We feel that such an agency can accomplish, under your distinguished chairmanship, an important mission of goodwill from which the whole country may benefit in the future.

Our Committee, while striving to stimulate friendliness within the ranks of our Canadian society, is aware of its limitations. It could not, for instance, be expected to express an authoritative judgment on all questions pertaining to civil liberties. Unquestionably, however, our members feel that certain human rights and fundamental freedoms should be guaranteed to every Canadian citizen in the very text of our constitution in a form adapted to our national situation, in conformity with the rights of the various governments concerned, especially the provinces.

Our Committee respectfully suggests that in any project you may deem opportune to propose, special attention be given to the rights of the various ethnic groups and to all bona fide religious groups. In view of the composition of the Canadian population any document devoted to guaranteeing human rights and fundamental freedoms of our Canadian citizens should define explicitly the rights of ethnic and religious groups as well as of the individual.

Should the work of your Committee be continued in one form or another an opportunity might be given us, at a future date, to supplement these suggestions with more concrete proposals. Under the present circumstances we are not in a position to do so.

We convey to your Committee our best wishes for a successful conclusion of your deliberations and trust that the Government of Canada will give the most serious consideration to whatever recommendation may emanate from your Committee.

All of which is respectfully submitted.

Sincerely yours,

VALMORE GRATTON,
*Chairman of the Executive,
Committee on Group Relations in Canada.*

RESOLUTIONS

Adopted by the Board of Evangelism and Social Service of the United Church, March, 1950.

Human Rights

Whereas race and class prejudice is un-Christian and is one of the most stubborn barriers to peace among the peoples of the world; and

Whereas such prejudices pervade every level of life from the international to the individual;

Be it therefore resolved that this Board:

(1) Assure our governments that we support the Universal Declaration of Human Rights, and urge them to implement in word and deed the spirit of this declaration as far as their legislative powers will permit;

(2) Reaffirm continually in every phase of life the Christian belief in the supreme value of human personality by practical attitudes of fair play, fellowship and genuine understanding toward persons of all races, nationalities, classes and creeds.

(3) Extend the hand of Christian brotherhood to all newcomers from other lands and pledge ourselves to help them with Christian grace and kindness to become our fellow citizens;

(4) Call upon our Church communities to alert the public conscience concerning racial and class discrimination in all its subtle forms, especially as it may apply to the local scene;

(5) Call upon our churches so to order their ministry of service, both in congregational and community activities, that the spirit of Christian fellowship be convincingly demonstrated in all phases of the church's life;

(6) Call upon all parents to avoid expressions of prejudice before their children, to practise Christian democracy in their homes, so that "the beloved community" may become a living reality.

Adopted by the General Council of the United Church of Canada, Vancouver, B.C., September, 1948.

Canadian Citizenship and Civil Liberties

In view of current discussions in Canada and in the United Nations about Human Rights and Freedoms, this General Council of the United Church of Canada sets forth the following:

1. This General Council shares the concern of which these discussions give evidence for the recognition and preservation of the personal rights and liberties which derive from the sovereignty of God and the nature of man as made in the image of God. In particular, we are concerned with the preservation within our own country of those rights and liberties which have long been recognized in British law and practice, and have become characteristic of the administration of justice among British peoples. We recall that in the development of our civil and religious liberty the churches have played a great part throughout our history, and we declare that their maintenance is a matter in which we must have an unfailing interest.

2. We acknowledge the obligation of every citizen to render loyal obedience to the laws of the land and to the lawful commands of lawfully constituted authorities in the state, in so far as they are consistent with the laws of God;

but at the same time, we declare that all human statutes must be weighed according to the sacred and inviolable standards of these Divine laws, and that the state itself must be subject to God. We, therefore, oppose all forms of absolutism in the state.

3. We recognize that our democratic state has the right to defend itself against subversive or treasonable acts, but we believe also that in so doing it should not deny to any of its citizens any of their rights of citizenship. On the positive side we believe that it is the duty of the state democratically to strive for better relations among men in the establishment of a more justly ordered society, and we think that constructive efforts to this end should not be attacked as threats to the common good.

4. We urge most earnestly upon the Government and people of Canada continuous vigilance against all arbitrary procedures, consistent respect for personal rights and liberties, recognition of the equality of all citizens before the law, and loyal adherence to the established and proven principles and practices of justice.

5. We urge upon the Government and Parliament of Canada that every possible protection be given by law to the rights and liberties of citizens and residents of Canada, and that the support of Canada be accorded the Declaration and Covenant of the United Nations on Human Rights and Freedoms.

Adopted by the Board of Evangelism and Social Service of the United Church, March, 1949.

Human Rights

The United Nations has adopted a Declaration of Human Rights. The effectiveness of this Declaration depends on the degree to which member countries implement its terms. In Canada, however, most of these rights come under provincial jurisdiction, and there is uneasiness and fear that our liberties are neither clearly defined nor adequately protected. A guarantee of human rights is not only consistent with the Christian doctrine of the sacredness of personality, but required for the realization of the abundant life.

Therefore be it resolved that:

1. This Board petition the Dominion Government to take the necessary steps to establish further constitutional guarantees of human rights for the Canadian people; and

2. The Executive of the Board be empowered to take such action as it thinks feasible to ensure that Christian principles are respected in the framing of such guarantees.

Civil Liberties

Adopted by the Board of Evangelism and Social Service of the United Church, March, 1950.

Be it resolved that this Board:

(1) Call upon our people to be vigilant concerning the liberties of all citizens, and to be on guard against any forces that would deprive minorities of their rights in society;

(2) Request governmental authorities in Canada to enact and enforce such laws as may be necessary to protect the fundamental freedoms of all citizens against racial or religious discrimination in industry, business, politics, social affairs and the institutions and organizations of our common life.

PERIODICAL PRESS ASSOCIATION

TORONTO, CANADA

May 15, 1950.

The Honourable Arthur W. ROEBUCK, K.C.,
Chairman, Special Committee on Human Rights
and Fundamental Freedoms,
Senate of Canada, Ottawa.

Object

The object of this Brief is, first of all, to express the appreciation of our Members at having an opportunity to participate in the present enquiry into the broad subject of Human Rights and Fundamental Freedoms.

We also desire to set down some views on the suggested wording of the draft articles so that, among the freedoms indicated, Freedom of the Press shall be specifically ensured.

There is little need to review here the very great importance of the services rendered by the Press. The Press of Canada, in all its branches, renders a vital service to all the people of Canada, to all branches of Government and to all the institutions that make up our economic, social and political structure.

Periodical Press Association, as its name implies, comprises national newspapers, magazines and periodicals, whose combined circulation now exceeds 9,000,000 copies per issue.

We speak for the agricultural, business, industrial, technical, professional periodicals and for the general and class magazines—both English and French—published throughout Canada from Coast to Coast. Daily, weekly and weekend newspapers comprise other sections of the Press of Canada.

We submit that our very real interest in Freedom of the Press is actuated, not by mean and selfish considerations but, by these beliefs:

1. National periodicals are vital to the development of Canadian business and to the maintenance of unity in the Canadian nation.

2. During the years of growth toward nationhood, many influences have combined to establish high standards of education resulting, to an exceptional degree, in the *creation of a literate and informed people*. In this development, one of the most significant of the social influences has been exerted by a responsible Press.

3. Freedom of the Press is an *integral part of Freedom of Speech*. It is one of the freedoms of democracy which many Canadians are trying to maintain.

4. Under the Canadian way of life, there is no substitute that can be provided for the services rendered by a free Press. No Government can provide a free Press.

5. The Press can not be "free" if it is bound by economic handicaps. It must be free to sustain itself by a wise and experienced gathering of its legitimate revenues.

6. The Press can not be "free" if it is deprived of the right to freedom of expression. It must be free to function in the service of the people and in the maintenance of democratic ideals.

7. No medium of expression can be as effective and lasting as that of the printed word. On the record of the growth of Canadian nationhood, of the development of a national spirit, of what has been described as "Canadianism", this country's magazines and periodicals have left an imprint of a service incalculable in value and beyond question.

Because of an earnest desire to continue to render such services to the Canadian people, the publisher members of the Periodical Press of Canada have examined, with unusual interest, the draft articles now under consideration.

As we examined the articles as drafted, we were reminded that in the American Bill of Rights—the popular name given to the ten original amendments to the Constitution of the United States—the first article provides that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In the draft before your Committee, Article 15 provides for: "The Right to Freedom of Thought, Conscience and Religion".

Article 16 provides that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

While it might be argued that the phrase "through any media" embraces the press, it is our considered opinion that there should be specific mention of Freedom of the Press, as unequivocally stated as it has been incorporated into the Bill of Rights under which the press of the United States of America functions in a free society.

There is another aspect of Freedom of the Press, of peculiar concern to national publications who establish and maintain a national readership through the ordinary channels of sales and distribution common to the publishing industry. We refer to the securing of subscribers through the medium of selling agents and the subsequent distribution, in the main through the General Post Office, or by means of carriers and other delivery personnel.

The draft articles are implicit in assuming the existence of certain human rights and fundamental freedoms and in recognizing the need for their protection and preservation. Actually, today we have no guarantee of Freedom of the Press in this country and it is most desirable that this situation should be rectified.

It may be pointed out that the American Bill of Rights specifically prohibits Congress from making any law abridging the Freedom of the Press. This, the first amendment to the United States Constitution, has been of great value to the American publishing industry in combating restrictive ordinances affecting the sale of publications.

In Canada, such restrictive ordinances local in origin and, in many instances imposing fantastically excessive licence fees, have restricted or actually prevented the use of normal field subscription methods by the national Periodicals of Canada.

In worse case, and one which directly attacks the Freedom of the Press in its most vital phase, is the power accorded a local municipality, not only to impose a prohibitive licence fee before subscription representatives may go about their lawful business, but to refuse to issue a sales licence at any price and to call upon local police to drive subscription representatives of the Periodical Press from their communities on a threat of arrest and imprisonment.

It is the prayer of our industry that any Bill of Rights ultimately made effective in relation to the economic, social and political life of this country will ensure that Parliament shall not, and Provincial legislatures may not enact legislation that will make it impossible for the Press of Canada to proceed with its normal and customary sale and distribution of its publications, either within or without the place in which such periodicals are published.

We respectfully urge that your Committee make specific provision for the prohibiting of any interference with or abridgment of the Freedom of the Press in the exercise of its established and essential functions.

Sincerely yours,

I. D. CARSON,
Executive Vice-President, Periodical Press Assoc.

1950

THE SENATE OF CANADA

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PROCEEDINGS

OF THE

SPECIAL COMMITTEE

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

No. 10

CHAIRMAN

The Honourable Arthur W. Roebuck

REPORT OF COMMITTEE

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

ORDER OF REFERENCE

(Extract from the Minutes of Proceedings of the Senate
20th March, 1950.)

On motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Kinley, it was—

Ordered, That a Special Committee be appointed to consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration to the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

Article 5

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 6

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Article 7

- (1) No person shall be subjected to arbitrary arrest, detention or exile.
- (2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.
- (3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12

Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

Article 13

(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Article 14

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion of belief in teaching, practice, worship and observance.

Article 16

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

SPECIAL COMMITTEE

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the Government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms herein set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the Province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood;

That the said Committee shall have authority to send for persons, papers and records.

Attest.

L. C. MOYER,
Clerk of the Senate.

WEDNESDAY, 31 May, 1950

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 8.00 p.m.

Present: The Honourable Senators:

Roebuck, Chairman; Gouin, Doone, Petten, Gladstone, Reid, Kinley—7.

A draft Report was read, considered and amended. Further consideration of the Report was postponed until Tuesday, 6 June, 1950, at 8.00 p.m.

The Committee adjourned at 9.40 p.m.

Attest

J. H. JOHNSTONE,
Clerk of the Committee.

WEDNESDAY, June 21, 1950.

Pursuant to adjournment and notice, the Special Committee appointed to consider and report upon the subject of Human Rights and Fundamental Freedoms met this day at 8.00 p.m.

Present: The Honourable Senators Roebuck, *Chairman*; Gouin, Doone, Petten, Gladstone, David and Vaillancourt—7.

The draft report was again considered and further amended and, as amended, was adopted.

A sub-Committee consisting of the Hon. Senator Gouin and the Chairman was appointed to settle the exact phrasing of the amendments for inclusion in the Report, and these amendments were to be considered adopted by the Committee when approved by the Chairman, the Hon. Senator Gouin, and the other Senators present, namely, Hon. Senators David, Gladstone, Vaillancourt and Petten. Senator David agreed to concur in the Report when approved by the Hon. Senator Gouin.

The Committee adjourned at 9.40 p.m.

Attest.

J. H. JOHNSTONE,
Clerk of the Committee.

R E P O R T

The Special Committee on Human Rights and Fundamental Freedoms beg leave to report as follows:

By order of reference made on the 20th day of March, 1950, your Committee was authorized and directed to:

Consider and report on the subject of Human Rights and Fundamental Freedoms, what they are and how they may be protected and preserved, and what action, if any, can or should be taken to assure such rights to all persons in Canada, and that for greater certainty, but not so as to restrict the generality of the foregoing, that the Committee give consideration the following draft articles:

Article 1

Everyone has the right to life, liberty and the security of person.

Article 2

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4

Everyone has the right to recognition throughout Canada as a person before the law.

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Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

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(1) No person shall be subjected to arbitrary arrest, detention or exile.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for the arrest or detention and be entitled to a fair hearing within a reasonable time or to release.

(3) No one shall be denied the right to reasonable bail without just cause.

Article 8

Every person who is deprived of his liberty by arrest or detention shall have an effective remedy in the nature of *habeas corpus* by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Article 9

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

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No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

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Everyone legally resident in Canada has the right to freedom of movement and residence within the country, and the right to leave and return to Canada.

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(1) Men and women of adult age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage and during marriage.

(2) Marriages shall be entered into only with the free and full consent of the intending spouses.

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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 17

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 18

(1) Everyone has the right to take part in the government of the country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in the country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote.

149. Every person is entitled to all the rights and freedoms above set forth, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

150. Any person whose rights or freedoms as herein set forth have been violated may apply for relief on notice of motion to the Supreme or Superior Court of the province in which the violation occurred.

151. The above articles shall not be deemed to abridge or exclude any rights or freedoms to which any person is otherwise entitled.

That the said Committee be composed of the Honourable Senators, Baird, David, Davies, Doone, Dupuis, Gladstone, Gouin, Grant, Kinley, Petten, Reid, Roebuck, Ross, Turgeon, Vaillancourt and Wood.

That the said Committee shall have authority to send for persons papers and records.

In obedience to this order of reference, your Committee has inquired into the general subject of Human Rights and Fundamental Freedoms and has held eight public sessions in the course of which thirty-six witnesses have been heard. Witnesses appearing in person before your Committee and testifying are as follows:

April 25, Prof. F. R. Scott, Faculty of Law, McGill University, Montreal.
Mr. King Gordon, United Nations Division of Human Rights.

April 26, Mr. Irving Himel and Dr. Malcolm W. Wallace, Association of Civil Liberties.
Mrs. Robert Dorman, National Council of Women in Canada.
Mrs. E. R. Sugarman, National Council of Jewish Women of Canada.

April 27, Messrs. Monroe Abbey and Saul Hayes, Canadian Jewish Congress.
Dr. E. A. Forsey, Canadian Congress of Labour.
Mrs. M. H. Spaulding, League for Democratic Rights.

April 28, Mr. F. P. Varcoe, Deputy Minister of Justice, Ottawa.
Mr. J. M. Magwood, Chairman, National Young Adult Program Committee, Y.M.C.A.
Dr. R. S. K. Seeley, Provost of Trinity College, University of Toronto.
Dr. E. A. Corbett, Director, Canadian Association of Adult Education.

May 2, Mr. R. Grantham, Associate Editor of the Ottawa Citizen.
Mr. Claude Jodoin and Mr. Leslie Wismer, M.P.P., Trades and Labour Congress of Canada.
Mrs. G. N. Kennedy, Mrs. C. E. Catto, Prof. D. H. Hamly.
Mrs. D. C. MacGregor, and Mr. H. A. Miller, World Federalists, Toronto.

- May 3, Mr. Leon Mayrand, Assistant Under-Secretary of State for External Affairs.
 Mr. A. J. Pick, Department of External Affairs, Ottawa.
 Rev. Dr. Wm. Noyes, Secretary, Committee for the Repeal of the Chinese Immigration Law.
 Mr. B. K. Sandwell, Editor, *Saturday Night*, Toronto.
 Mr. F. A. Brewin, K.C., Canadian Committee for a Bill of Rights.
- May 9, Mr. Morris Biderman, United Jewish People's Order.
 Mr. Edmond Major, Civil Liberties Union, Montreal.
 Ven. Archdeacon C. G. Hepburn, Executive Committee of the Department of Christian Social Service of the Church of England in Canada.
 Mr. Lyle Talbot, Windsor Council on Group Relations.
- May 10, Miss C. Wilson, Save the Children Fund.
 Mr. R. K. Ross, K.C., St. Catharines, Ont.
 Mr. George Tanaka, National Japanese-Canadian Citizens' Association.
 Miss Mary McCrimmon and Mr. Ben Nobleman, Canadian Youth Groups.

Many of those testifying presented the Committee with written briefs, and, in addition to these many briefs and statements have been received from persons and organizations.

The witnesses who testified or presented briefs gave freely of their time, thought, and effort in a public spirited endeavour to assist your committee by the imparting of their knowledge and convictions on the important subject under consideration. Your committee expresses its gratitude for the generous assistance which it has received.

Your Committee was urged to recommend the incorporation into Canadian law of the United Nations Universal Declaration of Human Rights and Fundamental Freedoms. Your Committee finds, however, that the Universal Declaration, as its name implies, was drafted for general application and was not designed with special reference to Canadian conditions with our divided jurisdiction and individual history. This finding also applies to the draft articles appearing in the Senate Resolution, most of which are copied from the Universal Declaration. Witnesses before your Committee addressed themselves to the general principles of Human Rights and Freedoms and scarcely at all to the items in detail.

Your Committee prefers to express its own thoughts as applied to Canadian problems rather than to attempt to base its report on these individual paragraphs.

A Basic Conception.

As a result of its inquiries, your committee is assured that there are a very large number of persons in Canada who are deeply interested in the subject of Human Rights and Fundamental Freedoms and that much thought has been devoted by our citizens to the subject. That every man, woman and child has rights is generally accepted as axiomatic and that such rights should be protected is a conviction as universally held.

Your committee also agrees with this view, holding that every human being irrespective of mere classifications on account of race, creed, sex, caste or colour, and other like distinctions, has rights which flow from His Divine creation. The brotherhood of man results from the Fatherhood of God, and a fundamental equality among men necessarily follows. Such rights are not created by men, be they ever so numerous, for the benefit of other men, nor are they the gift of governments. They are above the power of men to create. They may be violated by men, but not with impunity. They should be recog-

nized and every care should be taken to preserve them inviolate. Individuals, communities and governments do wrong when they attempt to take such rights away or to disregard them. The invasion of the rights of an individual is wrong irrespective of how many share the guilt, and though the wrong be at the instance of government.

Life and Liberty.

It is not possible for your committee to give an all-inclusive definition of human rights, except in the broadest of general terms or to list the various ways in which human rights may be violated. The right to life and liberty is basic, and from this as a foundation there follows the endless ways in which life may be lived and liberty exercised, and the equally endless ways in which the life and liberty of one individual may be interfered with by another individual, or other individuals. Men now inhabit the globe in great numbers, so that the rights of each individual must necessarily be limited by the equal rights of all other individuals. It is in order to preserve this balance of rights that governments have been instituted and laws are devised and enforced. The problems with respect to Human Rights and Fundamental Freedoms arise out of the fact that human beings must live together in communities. In order that life may continue and liberty be enjoyed, certain rules of conduct become necessary. Long and painful and frequently tragic experience has taught us some of the things we must avoid both individually and collectively if the lives of individuals are to be lived in freedom.

The increase in population, industrial development and intellectual progress, together with the tragic experience of two great wars, have created new needs and made apparent the necessity for the reaffirmation of old truths. The false ideology of the Nazis, Fascists and Communists, based on autocracy and disregard of the rights of the individual, has strengthened our conviction that the way of life of the western world is based upon respect for the rights of the individual and also strengthened the conviction that governments are properly servants, not masters, of the people. Men's thoughts throughout the western world have turned to the subject of Human Rights and Fundamental Freedoms.

The United Nations.

Five years ago, representatives of forty-nine Nations gathered at San Francisco to found the organization now known as the United Nations. The long and costly war waged by the Allied Nations against a power, which professed and practised the grossest violations of individual rights, had quickened the instincts of freedom and the desire for universal security. The awakened respect for human rights was evidenced in the Atlantic Charter and the Four Freedoms message. As a result, references to basic rights and fundamental freedoms appear in seven of the articles of the Charter of the United Nations adopted at San Francisco in 1945. The preamble of the Charter reaffirms faith in human rights and in the dignity and worth of the human person. The State signatories of the Charter pledge themselves to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Canada was a signatory of the Charter.

Three additional years of discussion and consultation produced the document which was adopted by the General Assembly of the United Nations meeting at Paris in 1948, known as the United Nations Universal Declaration of Human Rights. Of fifty-eight Nations represented at this United Nations General Assembly, forty-eight voted for the Declaration, eight abstained and two were absent. No vote was cast against it. Canada voted for it.

The Declaration states in its preamble that "recognition of the inherent dignity and the equal and inalienable rights of all members of the human family

is the foundation of freedom, justice, and peace in the world," and declares that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind."

The Declaration enunciates the right of all to life, liberty and security of person, the right to equal treatment before the law; to fair trial; to freedom from arbitrary interference with one's privacy; family; home and correspondence; to freedom of movement; to a nationality; to marry and found a family, to own property; to freedom of thought, conscience and religion; to freedom of opinion and expression; to peaceful assembly and association; to take part in the government of one's country directly or through chosen representatives; to periodic and genuine elections by universal and equal suffrage.

United Nations Covenant.

The Preamble of the Universal Declaration speaks of measures to be taken, both internationally and nationally, to secure recognition and observance of human rights, and accordingly the Human Rights Commission of the United Nations is now drafting and developing a proposed covenant to take the form of an international treaty imposing on those nations which enter into it precise legal obligations. While the terms of the proposed covenant are not yet finally settled, your committee regards with sympathetic approval this effort to bring about in the world at large a fuller recognition of human rights and a more universal practice of fundamental freedoms.

The action of the Senate of Canada in constituting this Special Committee with authority to enquire into and report on the subject of Human Rights and Fundamental Freedoms is in keeping, expressed in the national field, with the Preamble of the Universal Declaration. Your committee finds the Canadian nation deeply interested in rights and freedoms both internationally and nationally.

Entry Into Nationhood.

Canada is just commencing her life as a Nation. The British North America Act gave to the Colonies which it federated a limited autonomy. The Imperial Parliament remained in control and our external relations were retained completely in the hands of the United Kingdom authorities at Westminster. Gradually, however, over the years, the statesmen of Canada have cast off, step by step, Canada's Colonial limitations, so that Canada has in the fullness of time achieved a complete and unfettered national status, together with a high place in international affairs. Just recently we have given final appellate jurisdiction to our own Courts, and the Dominion Parliament has assumed control of the Canadian Constitution in matters within the jurisdiction of the Dominion Parliament. At the present time representatives of the Dominion and Provincial Parliaments are endeavouring to work out an agreed procedure for control of the Constitution in all respects. This is the final step in the legalistic recognition of Canada as a Nation of equal status with all other nations within the British Commonwealth of Nations.

Land of the Free.

This is then the very time for Canada to decide the basis upon which this new Nation is founded. With an astounding unanimity, Canadians have individually decided that Canada shall be a land of the free. That here men shall live in the rule of law, in security of person, and that none shall oppress. Equality of right is basic in Canadian thought and must be assured in Canadian law, so that men may live confidently in self respect associating freely and expressing their thoughts without fear. This is the free, self-respecting, manly nation which Canadians have envisaged, and this is the time to nail the emblems

of law, liberty and human rights to our mast-head. This is the very moment in which to decide the basis of our nationhood, to guarantee human rights and fundamental freedoms to all our citizens, and to proclaim our principles to the world.

Let it be said in the future that when Canada assumed complete control of her destiny, her first act was to affirm as the basic principle of her federation, the Human Rights and Freedoms of all her citizens.

Let the Canadian Ship of State embark on her glorious voyage into the future with the rule of law at the helm, liberty at the mast-head, and beauty, culture and happiness on the prow.

Now the practical method for making these ideals effective is to write the provisions protecting human rights into the Canadian Constitution, so that they may be administered in our Courts, and so that they may become binding and obligatory alike upon individuals and upon government.

How to Proceed.

The preferable place for such fundamental law is in the Constitution, which at present in Canada is the British North America Act. This Act already contains a number of clauses protecting certain valued human rights such as the use of the two official languages, annual sessions of Parliament, elections every five years, an independent Judiciary, Separate Schools and generally a Constitution "similar in principle to that of Great Britain," or, in other words, the practices of Parliamentary Government. These guarantees of certain minority rights have profoundly influenced our national development and indicate the procedure we should now follow when guaranteeing individual rights, as distinguished from minority rights. The advantage of incorporating provisions of fundamental law in the Constitution are obvious. Such provisions would be binding upon persons in all parts of the country and upon all governments, thus no problems of Dominion-Provincial jurisdiction on Human Rights and Fundamental Freedoms would arise. Alterations in this fundamental law would require national and provincial concurrence, so that setting these safeguards aside in isolated instances would present considerable difficulty. The preservation of liberty has a national as well as a local significance, and were the safeguards national in scope, the guardianship of an independent judiciary would be most effective.

The enactment of a National Bill of Rights, however, presents difficulties. In Canada, because of her history and the harmonious association of peoples of different races, language and religion, respect for Provincial rights as they have been defined in the past is essential. No informed person with any sense of responsibility would suggest that the Dominion Parliament forcibly invade the Provincial jurisdiction. Concurrence, therefore, is an essential requisite to constitutional progress.

A Passing Difficulty.

This difficulty may not be insuperable, but there is also another presently existing but, it is hoped, passing obstacle. The British North America Act is a statute of the Imperial Parliament at Westminster, and objection is now taken by Canadians to Legislative intervention by an authority beyond our shores, and not of our own election even though such action is taken at our own instance. Such a request by Canada to the United Kingdom Parliament would have the appearance at least of a surrender of sovereignty.

For these reasons, your Committee is of opinion that it would be wise to await the time, which we hope is not far distant, when prospective Dominion-

Provincial Conferences will have worked out a method for the control within Canada of the Canadian Constitution, and agreement has been reached as to incorporation in the Constitution of a national Bill of Rights.

Such agreement may not be as difficult or unlikely as it might at first appear, for such a Bill of Rights in the National Constitution would contain only the simple first principles of human rights and freedoms, matters upon which there is already very general agreement.

It is realized that this procedure will take time, however great the goodwill and concurrence of those in authority, and however desirable the objective.

Declaration of Human Rights.

Your Committee therefore recommends that, as an interim measure, the Canadian Parliament adopt a Declaration of Human Rights to be strictly limited to its own legislative jurisdiction. Such a Declaration would not invade the Provincial legislative authority, but it would nevertheless cover a very wide field. While such a Declaration would not bind the Canadian Parliament or future Canadian Parliaments, it would serve to guide the Canadian Parliament and the Federal Civil Service. It would have application within all the important matters reserved to the Canadian Parliament in Section 91 and in other sections of the British North America Act. It would apply without limitation within the North West Territories.

A Canadian Declaration of Human Rights could follow in its general lines the Preamble and certain of the articles of the United Nations Universal Declaration of Human Rights subject to the reservations expressed by the Canadian Delegates at the United Nations. It would declare the right of every one in Canada to life, liberty and personal security, the right of equal treatment before the law, to fair trial, to freedom from arbitrary interference with one's privacy; family, home and correspondence; to freedom of movement, to a nationality; to obtain asylum from persecution; to found a family, to own and enjoy property; to freedom of thought, conscience and religion; to freedom of opinion and expression; to peaceful assembly and association; to take part in the Government of the country directly or through representatives chosen at periodic elections by universal and equal suffrage. The Declaration would also state that every one in Canada has duties to our Community and is subject to such limitations as are determined by law, for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and of the general welfare and good government of Canada. Finally, the Declaration would specify that none of its provisions may be interpreted as tending to permit any group or person to engage in activity aimed at the destruction of the rights and freedoms of the people of Canada.

Such a Declaration of Human Rights adopted by the Canadian Parliament would solemnly affirm the faith of all Canadians in the basic principles of freedom and it would evidence a national concern for human rights and security. Judges would recognize the principles of such a Declaration as part of Canada's public policy, and subsequent Parliaments would hesitate to enact legislation violating its revered principles. To adults it would convey a feeling of security and children would memorize its terms with pride.

Canada should lead the world in reliance upon the rule of law, in her respect for human rights and in her care for fundamental freedom, and in a love of liberty. Her adoption of a National Bill of Rights in due time would set an example which would enhance her status among the nations and which might lead to similar progress by others.

Draw the Bill.

A Bill of Rights, whether statutory or constitutional, should be carefully though courageously drawn. Your committee recommends that the task be referred to a carefully selected committee.

What is required in Canada is a broad statement of Human Rights, leaving as did the drafters of the United States Bill of Rights, the detail of application and the necessary qualifications and exceptions to the Courts.

Many of the provisions suitable for inclusion in a Bill of Rights already appear in some portions of our law, but they are not always of nation-wide application. Some fundamental rights are already expressed in the Constitution. Other provisions of freedom and security are in the Statutes and still others in decisions of the Courts, together with custom, or the commonly accepted way of doing things.

What is required in Canada is one grand and comprehensive affirmation, or reaffirmation, of human rights, equality before the law and of security, as the philosophical foundation of our nationhood, that will assure continually to each Canadian that he is born free and equal in rights and dignity with all other Canadians, that he cannot be held in personal slavery, or arbitrarily arrested, that he will always be presumed innocent of any offence until proven guilty, that he has freedom of thought, conscience, expression and movement, and so on through the Universal Declaration. Thus will Canadians know of their freedom, exercise it in manly confidence and be proud of their country.

Individual Responsibility.

The enactment of a Bill of Rights is not however the last requisite to a free and just society. While individuals and groups have natural rights, they have also responsibilities. Individuals who practise discrimination, who in their daily life invade the fundamental rights of others, should pause to remember that this is Canada, a Christian country in which the spirit of fairness, kindness, courtesy and understanding is the basis of our well-being and happiness.

Conclusion.

Your committee concludes its report by further recommending that all men give thought to the Fatherhood of God and the Brotherhood of Man, so that by common consent the rule of law and liberty be more fully established and more universally practised to the end that the rights of the individual be recognized and respected and the well-being, dignity and security of all humanity be thus preserved.

All of which is respectfully submitted.

A. W. ROEBUCK,
Chairman.



GOVT PUBNS

BINDING SECT. JUL 2 1980

